S. Hrg. 99-160

THE MALT BEVERAGE INTERBRAND COMPETITION ACT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 412

A BILL TO CLARIFY THE CIRCUMSTANCES UNDER WHICH TERRITORIAL PROVISIONS IN LICENSES TO DISTRIBUTE AND SELL TRADEMARKED MALT BEVERAGE PRODUCTS ARE LAWFUL UNDER THE ANTITRUST LAWS

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THE MALT BEVERAGE INTERBRAND COMPETITION ACT—S. 412

TUESDAY, MAY 14, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators DeConcini, Simon, Heflin, and Specter.

Staff present: Kenneth Starling, committee antitrust counsel; Robert Feidler, Christopher Dunn, Arthur Briskman, and Neal Manne.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. We are meeting today to hear testimony on S. 412, the Malt Beverage Interbrand Competition Act. The bill before us would make it lawful for brewers to establish exclusive territories for the distribution of a malt beverage product when such product is in substantial and effective competition with other malt beverage products.

The current treatment of exclusive distributorships and exclusive territories is governed by the Supreme Court's decision in *Continental TV, Inc.* v. *GTE Sylvania, Inc.*, in 1977.

In that case, the Court held that exclusive territories and other nonprice vertical restraints are to be judged under the rule of reason and are unlawful only if their adverse effects outweigh any benefits they might yield.

The distribution and sale of alcoholic beverages is an area that for many years has been the responsibility of the States, and is so provided in the Constitution. In the exercise of their sovereignty, a significant number of States have adopted laws requiring the use of exclusive territories for distributors of malt beverages. My own State of South Carolina has enacted such a law.

It is my understanding that when States have so acted, and have done so in ways that comply with the relevant legal standards, immunity from Federal antitrust law is conferred on those parties who implement the policy of the State.

Where States have not enacted such laws, the Federal antitrust laws govern the use of exclusive distributorships, but only through application of the rule of reason. Hence, under current Federal law, exclusive distributorships are legal until proven unreasonable.

We have heard testimony on measures similar to this bill in other Congresses. There are suggestions that exclusive territories for distributors lead to higher prices for consumers.

On the other hand, there are suggestions that the use of exclusive territories allows manufacturers to compete more effectively among one another by guarding the quality of their products and/or by extending the scope of their service.

I am interested in hearing the views of our witnesses on these points. I am especially interested in learning about the experience with prices in the States, including South Carolina, my State, which have enacted exclusive territories laws. I would like to know whether prices that retailers and consumers pay increased after such laws were enacted.

We are fortunate to have with us today a group of very informative and distinguished witnesses to share their views and experience. I thank them for coming and I look forward to their remarks.

Senator DeConcini.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DeConcini. Yes, sir; Mr. Chairman, let me begin by thanking you for the kindness and generosity you have shown to me over the years, especially with regard to this legislation.

As the chairman knows, I am deeply committed to this legislation inasmuch as I believe it is overdue, deserved, and will benefit consumers and retailers across the country. The chairman and I may not see eye to eye on the substantive merits of this bill, but in spite of those differences the chairman has been unwaveringly fair and willing to allow the committee to work its will.

Subsequent to today's hearings, I am hopeful that the chairman will place this matter on the committee agenda so that we can decide by a majority vote whether the Malt Beverage Interbrand Competition Act should be reported to the Senate floor.

I will not take up the committee's time with a detailed legal analysis of the legislation that Senator Goldwater and I, together with 18 other colleagues, have introduced. We have Dean Gellhorn, one of the preeminent legal scholars in the field of antitrust, who will do precisely that.

But before we turn to our legal experts and the small independent retailers who support this legislation, let me make a few points. The Malt Beverage Interbrand Competition Act is designed to allow our 50 States to work their will in the area of alcohol control.

This legislation allows the States to continue regulating malt beverages the way they have done for the past half century. The bill is designed to remove impediments to that regulation created by some novel interpretation of Federal antitrust laws.

Our purpose is not to change antitrust laws. Our purpose is to clarify areas of uncertainty created by some recent decisions involving the exclusive territories. These uncertainties have provided opportunities for certain individuals and groups to exploit malt beverage wholesalers through the judicial system.

Under our bill, we provide the courts with a simple, effective test. If a showing can be made that substantial and effective price competition between malt beverage brands exists, then a suit alleging violation of antitrust laws based solely on the fact of exclusive territories would be dismissed.

If the showing cannot be made or if there are other grounds for the suit, then the litigation would proceed using the rule of reason standard as established in the *Sylvania* case.

I have been much disturbed, Mr. Chairman, by the sometimes irresponsible claims that have been made against this legislation; however, I realize that when people fight over legislation they sometimes say things that are not accurate.

This committee has an obligation to look beyond those claims. Perhaps the most distressing tactic employed against the legislation has been the repeated theme that this bill benefits the so-called beer barons and is against the interests of the average retailer and consumer.

Forget for a moment that most beer wholesalers are themselves small businessmen. In truth, Mr. Chairman, the campaign against this legislation is generously financed by a small group of the most powerful corporations in America. They are the giant food chains like Safeway, Kroger, and their trade association, the Food Marketing Institute.

I believe we can dismiss any illusion that the giant supermarket chains are spending their money so generously because they are advocates of the public interest. These organizations see, in the elimination of exclusive territories, an opportunity to make vast amounts of money at the expense of traditional small- and medium-sized businesses.

If they can eliminate exclusive territories, they can then eliminate competition, obtain an overwhelming portion of the sale of malt beverages, and drive small grocery stores and liquor stores out of business, or at least out of the beer retailing business.

At some point during the morning proceedings, I expect that the Food Marketing Institute will attempt to rebut this contention by pointing to the fact that the National Association of Convenience Stores opposes this legislation.

Mr. Chairman, I cannot tell you how that group makes its internal decisions. However, I can tell you that their opposition is next to meaningless. I took the trouble of writing the Southland Corp., better known as 7-Eleven, the largest convenience store chain in America, to determine their position.

I ask permission, Mr. Chairman, to enter their response in the record.

[The following was received for the record:]

THE
SOUTHLAND
CORPORATION

April 10, 1985

The Honorable Dennis DeConcini
United States Senate
328 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator DeConcini:

Thank you for inviting The Southland Corporation to comment on the Malt Beverage Interbrand Competition Act. Your understanding that Southland's position on this bill differs from that of the National Association of Convenience Stores is correct; yet, both NACS and Southland are interested in the same goal: assuring a viable, competitive malt beverage wholesaling industry which can provide quality services to all retailers. The Association and Southland merely disagree in this instance on which policies might best foster our mutual goals.

Southland believes that the Malt Beverage Interbrand Competition Act will enable wholesalers to enhance service to all of their customers within a geographical territory and to do so at more competitive rates than would be possible without enactment of this legislation. Removing the uncertainty regarding geographical territories will permit wholesalers to develop sound, long-range business plans to service their customers; moreover, clarification of the legitimacy of geographical territories will lower the number of frivolous lawsuits wholesalers presently must defend, the costs for which ultimately are passed along to their retail customers. Enactment of this legislation will provide malt beverage wholesalers the same legal protection presently afforded soft drink distributors.

Those who oppose this legislation usually cite as their principal reason their fear that competition will be lowered. There certainly has not been a reduction in soft drink competition since enactment of similar legislation applicable to that industry. Southland, through its 7-Eleven convenience stores, does business with more than 800 malt beverage wholesalers throughout the country. These independent businessmen provide 7-Eleven and the entire retailing community reliable services at competitive rates. With such strong competition among brands, we do not believe competition will be diminished in any way by the enactment of this legislation.

We are grateful to have the opportunity to comment on this proposed legislation and to join with our wholesale suppliers in urging Congress to enact the Malt Beverage Interbrand Competition Act.

Very truly yours,

W. Michael Click

W. Michael Click
Manager, Government Affairs

WMC:jcf

Senator DECONCINI. Let me quote a key paragraph from that response.

> Those who oppose this legislation usually cite as their principal reason their fear that competition will be lowered. There certainly has not been a reduction in soft drink competition since enactment of similar legislation applicable to that industry. Southland, through its 7-Eleven convenience stores, does business with more than 800 malt beverage wholesalers throughout the country. These independent businessmen provide 7-Eleven and the entire retailing community reliable service at competitive rates. With such strong competition among brands, we do not believe competition will be diminished in any way by the enactment of this legislation.

The largest chain of convenience stores in my home State of Arizona, Circle K, has taken no position. The president of that company is presently studying it at the request of Senator Goldwater and myself.

Frankly, I believe that any small business organization which examines this bill closely and is free from outside political pressures will come to the conclusion that it serves the interests of small business and the American consumer.

I readily concede, Mr. Chairman, that this bill is not designed to further the interests of the giant grocery store chains. I am not opposed to these organizations in any way; that is part of our process. However, I also believe that we should move to stem the tide of massive conglomerates that are drowning the very concept of independent small business men and women.

For 50 years, the beer industry has functioned with a system of exclusive territories. During that time, beer has been distributed in a fair manner and with plenty of interbrand competition, so much so, in fact, that beer prices have risen only a fraction of what overall inflation has risen during the same period.

For 50 years, the States have managed to regulate the beer industry without the Federal Government's interference, and I am sure they can continue without Uncle Sam telling them what to do.

Mr. Chairman, again, I want to thank you. I know Senator Goldwater also extends his thanks and appreciation for these hearings. We are asking, Mr. Chairman, for the same treatment for this industry as we gave to the soft drink industry a few years ago.

Thank you, Mr. Chairman.

The CHAIRMAN. We have a statement here from Senator McConnell which we will include in the record at this point.

[The following was received for the record:]

INTRODUCTORY REMARKS OF SENATOR MITCH MCCONNELL

Mr. Chairman, it is a privilege and a pleasure to introduce to this distinguished committee one of the leading citizens of my hometown of Louisville, Kentucky, Mr. Lee Markwell. Mr. Markwell is here today on behalf of the Kentucky Grocers Association, and is eminently qualified to testify on the subject of this legislation. In fact, he has been in the grocery buiness all his life.

Mr. Markwell was raised in the grocery business, and worked in his father's small grocery in the Germantown area of Louisville. He has been in the grocery business ever since. He is the owner of three Pic-Pac Markets in Louisville, markets that he opened and made successful after one of the large grocery chains had left the neighborhoods for more attractive territory. Mr. Markwell moved into the same space, providing much needed outlets in the affected neighborhoods at the same.

He is the past president and vice president of the Kentucky Grocers Association and appears before the Committee today as a board member of that group. It is a pleasure to welcome him here today. Thank you, Mr. Chairman.

PREPARED STATEMENT OF SENATOR MITCH McCONNELL

Mr. Chairman, I am pleased to be here today to take part in this hearing on the Malt Beverage Interbrand Competition Act, S. 412. As you know better than I, this bill has been the subject in one form or another of numerous hearings in the last two Congresses, and one would think that most of the questions that might be raised about the subject matter of this bill have already been answered.

Yet I find as I read the wealth of material explaining the issues as well as the reports of the proceedings in the preceding Congresses that a great many questions remain. The supporters of the bill maintain in forceful terms that the bill is not meant to exempt beer wholesalers from the national antitrust laws. Rather, the bill is apparently meant only to confirm the consensus of prevailing caselaw that territorial agreements between a manufacturer and a wholesaler are not per se in violation of the antitrust laws. Ostensibly, the bill would achieve two main effects. First it would "reinforce" the States' rights under the twenty first amendment to the Constitution, thus providing them maximum freedom and security in regulating beer sales. Second, it would "preserve" the integrity of the system of distribution that has been in place.

Yet I find it interesting that we should have to pass legislation that has no apparent significance in the market place. Evidently, this bill, if enacted into law, would not alter or supersede any state law in the field. Nor would it change in any meaningful way the status of the Federal antitrust laws, for it "merely confirms the consensus of the prevailing case law." I find myself asking repeatedly as I review the material for and against this bill what is the point?

Most certainly, Congress does not routinely enact legislation that merely confirms the existing case law in a particular field, and even if it does on occasion, it is rarely limited to a particular industry. And even if we look at the beer distribution market as a separate industry, I am struck by the oddity of this approach.

As a matter of sound antitrust analysis, the Supreme Court reversed its earlier approach to exclusive distribution arrangements with its *Sylvania* decision, and held that such arrangements would henceforth be evaluated according to a rule of reason, rather than by the per se approach that had been announced in the *Schwinn* case. And that rule of reason approach is the same method used in antitrust analysis generally, whether the product be beer or bananas. Indeed, it is only after the courts have had substantial experience with a particular industry that they will strike a distribution agreement as per se illegal, and in the absence of such experience, the in-depth analysis called for by the rule of reason is perhaps the most sensible approach.

At the same time, I recognize that the rule of reason analysis favored by the Supreme Court can require long and exhaustive trials preceded by equally exhaustive and fabulously expensive discovery battles. And it does no one any good, least of all the consumer, to have distributors spending their scarce time and resources on litigation for no good purpose to defend lawsuits that are ultimately dismissed as previous. I also recognize that Congress has taken a similar approach with the 1980 passage of the Soft Drink Interbrand Competition Act, and it may be that this bill can be justified on the same grounds that led to passage of that bill.

Finally, it strikes me as just a little odd that Congress, after passing a law, should then seek to interpret for the courts while at the same time admitting to merely reaffirming an already existing body of case law. It is one thing to tell the Supreme Court that one of its decisions was wrongly decided and to overrule such a decision statutorily, but it is another to merely enact legislation that in essence pats the Supreme Court and some of the lower courts on the back while suggesting a new standard of analysis for those lower courts that seem to have gone astray.

This is legislation that we need to look closely at and consider carefully. I am pleased to see Mr. Lee Markwell of Louisville, Kentucky here to help inform this committee of the competitive ramifications of this legislation. Mr. Markwell is a true success story in Louisville, and now owns three Pic-Pac Supermarkets in Louisville. He is eminently qualified to speak to the effects this bill would have on the consumer and on the small, independent grocer, and I look forward to his testimony and to that of the other witnesses as we examine this bill.

Thank you, Mr. Chairman.

The CHAIRMAN. Now, before we have our first witness, I want to throw this out as one instance that concerns me. For instance, I have a groceryman in my State; he may testify today. At the last hearing, he said this: I sell beer and I want the right to buy Budweiser beer, or whatever kind he sells, from the agent in Charleston or the agent in Columbia. I do not want to be restricted to any one agent.

The question is, why should he not have that opportunity if he can get a better deal from one than the other in that competition? So I just throw that out as a matter that is disturbing to me.

At this point, I wish to place a copy of S. 412 into the record [Text of S. 412 follows:]

II

99TH CONGRESS
1ST SESSION

S. 412

To clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6 (legislative day, JANUARY 21), 1985

Mr. GOLDWATER (for himself, Mr. DECONCINI, Mr. ABDNOR, Mr. BURDICK, Mr. EAGLETON, Mr. EAST, Mr. GRASSLEY, Mr. HOLLINGS, Mr. MATTINGLY, Mr. MELCHER, Mr. NUNN, Mr. PRYOR, and Mr. REIGLE) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Malt Beverage Interbrand Competition Act".

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any written contract in effect on or entered into after the effective date of this Act by any brewer, importer, trademark owner, or trademark licensee of a trademarked malt beverage with any wholesale distributor of provisions granting the wholesale distributor the sole and exclusive right to distribute and to sell such product in any defined geographic area within any State and limiting such exclusive distributor to the distribution and sale, directly or indirectly, of such product only for ultimate resale to consumers within that defined geographic area when such product is in substantial and effective competition with other malt beverage products within that defined geographic area.

SEC. 3. Nothing in this Act shall be construed to legalize the enforcement of provisions described in section 2 of this Act in any written contract described in that section by means of price-fixing agreements, horizontal restraints of trade, or group boycotts, if such agreement, restraints, or boycotts would otherwise be unlawful.

SEC. 4. As used in this Act, the term "antitrust law" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (Sherman Act), approved July 2, 1890, the Federal Trade Commission Act, approved September 26, 1914, and the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (Clayton Act), approved October 15, 1914, and all amendments to such Acts.

SEC. 5. As used in this Act, "malt beverage" shall mean and include beer of all types and varieties as defined in any Federal or State statute, ale, porter, stout, and all other similarly designated fermented beverages containing one-half of 1 per centum or more alcohol by volume.

SEC. 6. As used in this Act, the term "State" includes the District of Columbia and any territory or possession of the United States.

SEC. 7. This Act shall not invalidate or affect any provision of the laws of any State.

○

The CHAIRMAN. So we will now hear from the witnesses, and our first witness is Hon. Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, Department of Justice.

Mr. Rule, we are glad to hear from you. Now, could you take 5 minutes? Is it agreeable to put your entire statement in the record?

So, without objection, we will put your statement in the record and you may proceed.

STATEMENT OF CHARLES F. RULE, ACTING ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. RULE. Thank you, Mr. Chairman. It is a pleasure to be here this morning to present the Department of Justice's views on S. 412, the Malt Beverage Interbrand Competition Act. As was the case with S. 412's predecessors in previous Congresses, the Department opposes S. 412 because it represents an unnecessary and undesirable special-interest antitrust exemption that threatens consumer welfare.

S. 412, as has been mentioned, is designed to clarify the antitrust treatment of vertical territorial practices in the beer industry. Section 2 of the bill provides that exclusive territorial arrangements between brewers and wholesalers will not violate the antitrust laws where there is "substantial and effective competition with other malt beverage products within a defined geographic area."

Section 3 of the bill goes on to provide that the bill does not legalize the enforcement of such exclusive territories by means of price fixing, horizontal restraints of trade, or group boycotts.

The Department opposes S. 412 for basically three reasons. First, we believe the bill represents an unwise special-interest exemption from the salutary effects of the antitrust laws.

This administration—indeed, I believe this Senate—is a strong proponent of competition, free from governmental as well as private restraints. The antitrust laws play an important role in guaranteeing free competition, and only in compelling circumstances should that guarantee, in effect, be changed or altered for a particular industry. We do not think that has been shown in this case.

Indeed, the second reason that we oppose the bill is because we believe that the malt beverage industry is one that is particularly susceptible to anticompetitive effects of exclusive territorial arrangements, and that therefore, it is an especially poor candidate for special treatment under the antitrust laws.

Third, legislation in general, we do not believe, is necessary because the law of vertical restraints appears to be developing in a clear, procompetitive way. I would refer just briefly to the *GTE-Sylvania* decision through the *Monsanto* decision in the Supreme Court and the number of lower court cases.

In addition, I think the recently-released vertical restraint guidelines of the Department provide an analysis that hopefully will help to move the courts further toward rationalizing the law in this area.

I think, if anything, S. 412, by introducing new language, "substantial and effective competition," my create additional confusion and uncertainty that may not only increase uncertainty in the beer industry, but may also increase uncertainty, and perhaps the hostility, with which courts approach exclusive territorial arrangements in other industries.

All three of these reasons are important in terms of forming our opposition to S. 412. I want to focus on the second reason in my summary this morning. It is important to remember that the Department generally recognizes the benefits of vertical restraints, including exclusive territories to consumers.

Indeed, we have been in the forefront of the movement to get the law to recognize to a greater extent the procompetitive benefits. Frequently, such restraints can be used to overcome the so-called free rider disincentives that may result in the distribution of a product with less than an optimal mix of services, such as promotion, warehousing, and so forth.

As a result, the use of exclusive territories can make a manufacturer's or a brewer's product more competitive, with the result that consumer welfare is enhanced. On the other hand, exclusive territories can, under certain circumstances, harm competition by facilitating collusion among the manufacturers and/or distributors of competing independent brands.

The conditions that are necessary, though I stress not sufficient, for such arrangements to have an anticompetitive effect are, first, high concentration at the manufacturer level; second, the use of exclusive territories by distributors accounting for a large percentage of sales in the market; and, finally, the absence of easy entry at the manufacturer level.

In many, if not most, industries these conditions do not exist, and therefore there is little risk of facilitating collusion. The beer industry, however, is one in which these structural conditions do frequently exist.

First of all, concentration at the brewer level is high and has been rising. In 1984, the top two brewers accounted for 55 percent of national sales. The top four had a 76.8 percent share. This is an increase over the 1980 figures of 50 percent and 67.1 percent.

When looking at the State level, which may be even more appropriate in this area because of the inability generally to ship beer across State lines because of State regulation, at the State level concentration is generally even higher. In more than half the States, the share of the four largest brewers exceeds 80 percent.

Meeting the second condition, we understand that with the exception of Indiana, most brewers use exclusive territories, and therefore their use is prevalent throughout the industry.

Third, a prospective entrant into brewing may find it difficult to obtain channels of distribution because of the importance of brand names in the industry. It would take a new brewer a significant period of time to establish a substantial presence in the market.

I want to stress that I am not saying that exclusive territories in this industry are harming competition. Rather, because these conditions do exist, a closer look generally is required under the antitrust laws and such arrangements may, on closer examination, turn out to harm competition.

Simply, my point is that the current flexible approach under the antitrust laws is important in this industry to distinguish anticompetitive restraints from all others.

Finally, I want to mention just two factors that are frequently cited as reasons for the enactment of this bill. First, folks have said that there is a great deal of confusion and uncertainty in the law and it has been particularly chilling in the beer industry.

First, I think it is important to stress——

The CHAIRMAN. Your time is up. Do you see that red light?

Mr. RULE. Yes, sir.

The CHAIRMAN. I think you had better stop now.

Senator DeConcini, we are marking up an Armed Services bill and I have got to go there. Now, if any Republican comes in, I guess it would be proper under our customs for him to preside, or if Senator Metzenbaum, who ranks you, comes in. But would you take the Chair until then?

Senator DECONCINI. Yes, Mr. Chairman.

The CHAIRMAN. I want to say this: We have got a lot of witnesses here. The Department of Justice is opposing this bill. The Federal Trade Commission is opposing this bill. The National Association of Attorneys General is opposing this bill. The American Bar Association is opposing this bill, and then we have a panel for and a panel against, and then the executive director of the Consumer Federation of America is opposing the bill.

Those are the witnesses we have today, and we have got to rush along. I do not want to be discourteous to you and I hope you understand.

Mr. RULE. Yes, sir, Mr. Chairman.

The CHAIRMAN. Senator, I think you had better stop all of them at 5 minutes.

Senator DECONCINI. Yes, sir, thank you, Mr. Chairman. I regret the time restraints. We have had hearings on this subject matter before, so I think the Chairman is right that we should follow this process. The full statements will be entered.

The CHAIRMAN. Would you propound a few questions for me, please, to these witnesses?

Senator DECONCINI. Yes, I will.

The CHAIRMAN. He will give you the questions. Do you want to come up here?

Senator DECONCINI [presiding]. I will remain here because I believe another member is coming who will sit in your seat.

On behalf of Senator Thurmond, Mr. Rule, the antitrust standard by which courts currently judge the legality of exclusive territories is the rule of reason. Does the bill before us establish a standard different from the standard currently applied to the Federal courts?

I think you answered in your statement that it does by creating the substantial and effective standard? Is that correct?

Mr. RULE. The problem, Senator, is that it is not entirely clear whether or not the standard would be different. I think if you look at the experience under the soft drink bottlers bill, at least one court thought that that bill, which uses the same language, created new standards for the judgment of vertical restraints in that industry.

At the very least, it would be quite confusing because it would introduce at least new language into the law and the courts would have to determine, really, whether or not it created a new standard.

I think there is a clear concern that it may create a new danger. Having talked to some of the folks who have been involved in drafting the legislation, I have gotten the impression that their intent was not to change it, but to clarify it. My concern is that the effect may be the opposite.

Senator DECONCINI. Many States have enacted laws establishing or mandating exclusive territories for the distribution of beer. To what extent is State action immunity from Federal antitrust laws conferred on private parties by those State laws?

Mr. RULE. I think if you look at the 1982 decision in *Rice* v. *Norman Williams* in the Supreme Court, as well as the recent State action case decisions by the Supreme Court, one would be led to the conclusion that where required to distribute beer through exclusive distributorships, brewers would probably have the benefit of the State action doctrine.

More importantly, I guess, it is hard to see how this bill would provide brewers with any greater protection under the State action doctrine or give the States any greater leeway for regulation than does the current antitrust standard.

Senator DECONCINI. Does the Department of Justice have any evidence comparing beer prices in the States with exclusive territories with prices in the States without them?

Mr. RULE. What we have done is look at some of the studies that have been produced in this area. And, quite frankly, we think they are inconclusive. Many of the studies that purport to show a difference in price—that is, an increase in price after the imposition of exclusive territories—are flawed in terms of the analysis that they do.

They also fail to take into account that higher prices do not necessarily mean that there is harm to consumer welfare. If those prices represent beneficial services that consumers demand—preserving the quality of beer and that sort of thing—then the fact that the price of beer might go up to some extent does not necessarily mean that consumers are worse off, particularly if they are buying more beer.

So because of those problems, we simply have not seen a study that we are willing to say indicates an increase in price after the introduction of exclusive distributorships.

Senator DECONCINI. In the soft drink industry, the committee is going to hear from other witnesses today that say competition is more intense than ever, even greater than before passage of the legislation in 1980 that gave them the clarification in antitrust law application.

Why will not the same thing happen with the beer industry?

Mr. RULE. I guess I would disagree to some extent with the assumption that competition has increased in the soft drink industry.

Senator DECONCINI. Has it decreased, in your opinion?

Mr. RULE. Well, we have a number of ongoing investigations which represent conduct after 1980, after the passage of that bill, that do not necessarily indicate a problem in terms of exclusive territories, although that may be one aspect of them.

But it is something that we are looking at. There are some concerns about that industry. I would not be prepared to say that competition has decreased as a result of the bill, necessarily, but I certainly do not see evidence that it has actually increased.

Senator DeConcini. I understand that the number of lawsuits challenging the territorial provisions of the soft drink law are relatively few. Is that correct?

Mr. Rule. Yes, sir, it is.

Senator DeConcini. Could you comment on the side effects of legislation lessening that same thing that might accompany the clarification of the law proposed by this bill, S. 412?

Mr. Rule. It is true that the number of challenges to the soft drink industry is dramatically down or are generally nonexistent, but the same thing is generally true of the brewing industry. There is not a large number of legal challenges to exclusive——

Senator DeConcini. Have there been any, Mr. Rule, since 1980?

Mr. Rule. In terms of the soft drink industry?

Senator DeConcini. Yes, sir.

Mr. Rule. So far as I know, none precisely on exclusive territories, but I can check.

Senator DeConcini. Would you check? I would like to know for the record just roughly how many there might be.

Mr. Rule. Sure.

Senator DeConcini. Assuming that I am correct that the number of legal challenges is at least down substantially in the soft drink industry, is there any reason that we could not conclude that the same response would happen in the beer industry if this bill was passed?

Mr. Rule. Well, the situation in the beer industry is that right now there are not, to my knowledge—there apparently may be a few cases in the lower courts involving beer, but by and large, since the *GTE-Sylvania* decision, there have been very few challenges to exclusive territories in the beer industry.

Most of those that were concluded after *GTE-Sylvania*, as I understand it, had been brought before. So there really is not a large number of suits in the beer industry. There might be a reduction, but you are talking about a reduction from a very, very small number.

Senator DeConcini. Thank you, Mr. Rule. I have two other questions I will submit for the record, and only because of time I am going to have to cease asking the questions myself.

Thank you very much.

Mr. Rule. Thank you.

Senator DeConcini. We are sorry to put you through the rush here, but we appreciate your coming forward, and as the chairman pointed out, your full statement will be in the record.

Mr. Rule. Thank you, Senator.

[Prepared statement follows:]

Department of Justice

STATEMENT OF

CHARLES F. RULE
ACTING ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

S. 412

THE "MALT BEVERAGE INTERBRAND COMPETITION ACT"

ON

MAY 14, 1985

Mr. Chairman and Members of the Committee:

I am pleased to appear this morning to present the views of the Department of Justice on S. 412, the "Malt Beverage Interbrand Competition Act." This bill is nearly identical to S. 1215 and S. 1680, which were introduced during the last two Congresses, respectively, and which the Department opposed in testimony before, and in a written report submitted to, this Committee. We continue to oppose such legislation, and I am happy to have this opportunity to state our reasons for that position.

The bill's stated purpose is "[t]o clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws." Section 2 of the bill provides that nothing contained in any federal antitrust law shall render unlawful exclusive territorial agreements in any written contract between a wholesaler distributor and any brewer, importer, trademark owner, or trademark licensee of a trademarked malt beverage, so long as the malt beverages covered by such agreements are in "substantial and effective competition with other malt beverage products within [a] defined geographic area." 1/ Section 3

1/ "Malt beverage" is defined in section 5 of the bill as "beer . . . ale, porter, stout, and all other similarly designated fermented beverages containing one-half of one per centum or more alcohol by volume." Unlike the prior versions of this legislation, section 2 of S. 412 would apply to written contracts "in effect on or entered into after" the bill's effective date (underscored language is new). Thus, it would apply to existing contracts as well as those entered into after the bill became law.

provides that nothing in the bill shall be construed as legalizing enforcement of such exclusive territorial arrangements by means of "price-fixing agreements, horizontal restraints of trade, or group boycotts, if such agreement, restraints or boycotts would otherwise be unlawful."

As was the case with S. 412's predecessor legislation, the Department opposes enactment of S. 412 for three reasons. First, in general, the Department opposes piecemeal, special-interest industry exemptions to the general applicability of the antitrust laws. Second, the Department believes that the malt beverage industry is a particularly poor candidate for special, more lenient treatment of exclusive territories. If there is a need for legislation to clarify the application of the antitrust laws to vertical practices in general and exclusive territorial arrangements in particular--and the Department has not yet concluded that legislative clarification is necessary--that clarification should apply to all industries. Finally, S. 412 does not represent an improvement over current law. The Department believes that the present trend in the case law, as well as the analysis in our own Vertical Restraints Guidelines, belie the need for S. 412.

(1) In the absence of extremely compelling circumstances, the Department of Justice is opposed to industry-specific exemptions from the antitrust laws. The antitrust laws embody the fundamental national policy of free market competition, and

they are applicable to a variety of factual circumstances in virtually any industry. As the January 1979 Report of the President's National Commission for the Review of Antitrust Laws and Procedures concluded, Congress' reliance upon the antitrust laws to protect and promote competition is abundantly justified, and exceptions from this general policy should only be made where there is "compelling evidence of the unworkability of competition or a clearly paramount social purpose." 2/ As I will explain, no such showing has been made with respect to the malt beverage industry, and we believe none could be made.

Most important, to the extent that genuine clarification of the antitrust laws governing exclusive territories may be desirable, it should proceed on a general basis and not through special-interest legislation. Legislative endorsement of exclusive territories in the malt beverage industry may be undesirable not only in and of itself, but also may be construed to imply, incorrectly, that exclusive territorial provisions are less legitimate in industries not affected by this legislation. The same response is appropriate to arguments that passage of this bill would decrease the amount of litigation over, among other things, termination of distributors. We are not aware that there is more such litigation in the malt beverage industry than in others, and we

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2/ *Id*. at 177.

believe that any reforms in this area should be made on an across-the-board basis for the same reason we believe any clarification of the law should be a general--not an industry-specific--one.

We recognize that the Soft Drink Interbrand Competition Act, 3/ enacted during the 96th Congress, is similar to S. 412. The Department of Justice objected repeatedly and strenuously to passage of that Act, among other reasons, for fear that it might be interpreted as creating a standard of legality for vertical territorial arrangements in the soft drink industry different from that contained in Section 1 of the Sherman Act. Indeed, at least one court has indicated that it may be so interpreted; 4/ and enactment of S. 412 poses the same risk.

Furthermore, introduction of S. 412 confirms the validity of our repeatedly expressed fears that passage of the Soft Drink Act would create an undesirable precedent for similar special interest legislation applicable to other industries. 5/

3/ 15 U.S.C. §§ 3501-03.

4/ Coca-Cola Co. v. FTC, 642 F.2d 1387 (D.C. Cir. 1981), on remand, 98 F.T.C. 445 (1981) (granting motion to dismiss complaints based on "superseded standards").

5/ We note that the Soft Drink Act was initially proposed in response to FTC proceedings against seven soft drink syrup manufacturers. When the FTC held, in 1978, that the territorial arrangements constituted unreasonable restraints of trade, the soft drink industry pressed its efforts to have that legislation enacted and argued that it was necessary to correct a misapplication of the rule of reason to vertical territorial arrangements as required by GTE Sylvania. No similar situation exists with regard to the malt beverage industry.

Legislative recognition of another special rule for a particular industry would cast further doubt on the universal applicability of the antitrust laws to the unregulated sectors of our economy and would invite even further attempts by other industries to seek special-interest legislation. Such a course could only lead to a patchwork of differing antitrust rules that would greatly complicate antitrust enforcement and deprive the antitrust laws of much of their utility. In recent years, Congress has increasingly narrowed existing antitrust immunities, and has relied more heavily upon competition, even in highly regulated industries. Such movement has been seen, for example, in the airline, trucking, rail, and intercity bus industries and is presently occurring in the telecommunications and financial institutions industries. Establishment of an antitrust standard for the malt beverage industry potentially different from that applicable to other industries would be inconsistent with this desirable trend.

(2) The malt beverage industry is a particularly poor candidate for the special leniency embodied in S. 412. While exclusive territorial arrangements are generally procompetitive, under certain circumstances they can harm competition. More than most other industries, the malt beverage industry is one in which those circumstances may exist. Thus, there is no argument that there is less need to protect against anticompetitive exclusive territorial arrangements in the malt beverage industry than in other industries.

The Department strongly believes that the use of exclusive territorial arrangements by manufacturers generally is unlikely to be anticompetitive. For example, such arrangements can be used to overcome free-rider effects among distributors (wholesalers) and to improve product quality and safety. In many industries, distributor expenditures on product promotion, quality control (e.g., the refrigeration of beer while in storage), or point-of-sale services enhance the value and reputation of the product, leading to increased sales and intensified interbrand competition. If several distributors could sell a manufacturer's product in a given geographic market, they all would benefit from its enhanced reputation and the associated increase in sales induced by the expenditures of any one distributor and that distributor would capture only a fraction of the increased sales induced by its own expenditures. Any one distributor therefore would be reluctant to spend heavily so long as others were able to "free ride" on the services it provided by taking advantage of sales increases without contributing to the expenditures responsible for those increases. The disincentive created by this "free-rider" problem could result in too little expenditure in the aggregate on product promotion, quality control, or point-of-sale services. To encourage expenditures and so to increase the competitiveness of this product, a manufacturer may award exclusive territories to its distributors--that is, assign a different geographic area to each distributor and permit only the designated distributor to sell in its assigned area. As a result, promotion, quality control, and point-of-sale services may increase, the reputation of the product may improve, and sales may increase. Thus, where exclusive territories are awarded to combat free-rider problems and improve the product's reputation, the economic effects are generally beneficial. 6/

The Department recognizes that vertical restraints, including exclusive territorial arrangements, generally have beneficial or neutral effects on consumer welfare in a wide range of market settings. However, we also recognize that such restraints can have an anticompetitive effect. As we have stated in prior testimony, the Department maintains that exclusive territorial arrangements should be prohibited only where their effect may be substantially to restrain competition among competing independent brands, and that the appropriate focus of the antitrust laws should be the effect of restraints on interbrand as opposed to intrabrand competition.

One way in which exclusive territories may weaken competition is by facilitating collusion among distributors. Widespread use of exclusive territories by all or most manufacturers may reduce substantially the total number of distributors competing in any geographic area. Since the

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6/ For a more detailed discussion of the free-rider phenomenon, see Posner, "The Rule of Reason and the Economic Approach: Reflections on the Sylvania Decision," 45 U. Chi. L. Rev. 1 (1977).

likelihood of collusion increases when the number of firms in the market is reduced to a small number, widespread use of exclusive territories may weaken interbrand competition by facilitating collusion among distributors of the different manufacturers.

It might be argued that manufacturers would not award exclusive territories for the purpose of facilitating distributor collusion, since such collusion ordinarily increases wholesale prices and markups while reducing manufacturers' sales and profits. However, manufacturers might attempt to facilitate distributor collusion if the manufacturers believed that they could share in the higher profits earned by colluding distributors. 7/ Furthermore, collusion may be easier at the distributor than at the manufacturer level. The number of distributors in any given area may be lower than the number of manufacturers because several manufacturers may appoint the same exclusive-territory distributor. In addition, enforcement authorities may find distributor collusion more difficult to detect than manufacturer collusion because distributor collusion would probably take place on a more localized scale.

7/ Manufacturers might extract some of the profits of wholesaler collusion by raising wholesale prices, charging franchise or other fees, or imposing new obligations on wholesalers.

In many, if not most, industries, the structural characteristics of production and distribution significantly reduce the likelihood that exclusive territories will or can be used to generate anticompetitive results in the manner discussed above. For example, if distributor concentration remains low, even with widespread use of exclusive territories, the likelihood of effective collusion at that level also remains low. Even in those situations in which common use of exclusive territories creates high distributor concentration, the likelihood of successful collusion at that level is reduced if manufacturer concentration is low, 8/ or entry into manufacturing is easy. Some manufacturer--an established firm or a new entrant--would be strongly encouraged to exploit the opportunity for new sales created by the high prices and restricted availability of other manufacturers' products resulting from the distributor collusion. This incentive to undercut the collusively set price level would be particularly strong if the undercutting is unlikely to be quickly detected.

The Department of Justice testified a year and a half ago that the malt beverage industry appeared to be one in which the widespread use of exclusive territories carried a significant risk of producing anticompetitive effects. The underlying principles of the recently published Vertical Restraints

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8/ Low concentration in manufacturing is consistent with high concentration in distribution if several manufacturers appoint the same sole distributor in a given territory.

Guidelines corroborate our earlier conclusion. The Guidelines recognize that three conditions are necessary (though not sufficient) in order for the use of exclusive distribution to create a significant anticompetitive threat. Those conditions are: (1) high concentration in the manufacturing (i.e., brewing) market; (2) the use of the restraint by distributors accounting for a large portion of sales in their market; and (3) the absence of easy entry into the manufacturing (i.e., brewing) market. 9/ All of these conditions exist today in the malt beverage industry.

First, concentration at the brewer level is high. In 1984, the top two brewers had a combined national sales share of 55.0 percent and the top four had a 76.8 percent share. 10/ These figures represent increases over the 1980 levels, which were 50 percent for the top two brewers and 67.1 percent for the top four. 11/ Brewer concentration at the state level was often significantly higher than national concentration. For example, in 1982 the four-firm concentration ratio exceeded 80 percent in 28 of the 37 states for which data was available. 12/

9/ Guidelines at 16-18.

10/ Brewers Digest (February 1985).

11/ See 1981 Modern Brewery Age Bluebook.

12/ The breakdown was as follows: In 5 of the states the four-firm concentration ratio exceeded 90 percent, in 28 it exceeded 80 percent, in 35 it exceeded 75 percent, and in 37 it exceeded 65 percent. The identity of the four leading brewers differed in some states. These high state-level concentration

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Second, we understand that virtually all brewers use exclusive territorial arrangements, and that wholesalers account for virtually all sales in the market. Moreover, in many markets, different brewers utilize the same wholesaler. These factors result in concentration at the distribution level that may exceed that at the brewer level. 13/

Third, a prospective entrant into brewing may encounter difficulties in establishing distribution channels. This is primarily due to state regulations that usually prohibit vertical integration by brewers into wholesaling and place licensing requirements on entry by independent wholesalers.

As as result of these special circumstances, we believe that exclusive territories have the potential to raise competitive concerns in the malt beverage industry. I want to stress that I

12/ Footnote Continued

figures were essentially unchanged from 1980 levels. See Steinman's Beer Statistics News, April 1981, March 1983.

At the brewer level, markets are relatively complex and producers in particular relevant markets may be located in several states. However, at the wholesale level, markets may often be no larger than an individual state because state regulations generally prohibit sales by out-of-state distributors, making the state an upper limit on the size of the market. Markets might be as small as a particular metropolitan area. It is at the distribution level that concern about collusion is greatest in this context.

13/ While multiple brewer use of the same distributor would make concentration higher at the distributor than at the brewer level, a potentially offsetting factor is that territories awarded by different brewers may not overlap perfectly, perhaps increasing the number of distributors in a geographic market. In any event, distributor concentration appears to be high.

am not alleging that exclusive territories are currently harming competition. Rather, I am merely indicating that because the malt beverage industry is often characterized by the structural market conditions that can create a significant anticompetitive risk from the use of exclusive territories, this is an industry where it is particulary important to have a legal standard that effectively can deter anticompetitive exclusive territorial arrangements, while not inhibiting the use of all others. The present law gives us this flexibility while the proposed legislation, we fear, may not.

(3) At present, the legality of exclusive territorial arrangements is determined under Section 1 of the Sherman Act. 14/ In applying that provision to such arrangements between suppliers and their distributors, courts utilize the "rule of reason" to ascertain whether, under all the circumstances, the particular arrangement is an unreasonable restraint of trade. 15/ This flexible approach reflects appropriate judicial recognition of the fact that such arrangements, while not necessarily or even typically anticompetitive, may have anticompetitive effects, and may, in

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14/ 15 U.S.C. § 1. Section 1 prohibits "[e]very contract, combination, . . . or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, ..."

15/ Continental TV, Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977).

certain circumstances, require condemnation under Section 1. This approach also accommodates the development of a judicially manageable form of analysis, such as that set out in the Vertical Restraints Guidelines, that allows business persons to determine in advance whether their vertical practices violate the law.

Under the language of S. 412, exclusive territorial arrangements would be deemed lawful so long as the product was in "substantial and effective competition" with other malt beverages within a defined geographic area. However, the term "substantial and effective competition" is not defined in the bill, and its meaning is unclear. In addition, it is not clear which party would have the burden of establishing the presence or lack of such competition, how it is to be measured, or how much "substantial and effective competition" is necessary in order to satisfy the requirements of the bill if significant anticompetitive effects were to be shown. Nor is it clear at what level or levels on the production and distribution chain "substantial and effective competition" must be present in order for the bill's standard to be applicable. Thus, because of the differences in language between Sherman Act Section 1 and S. 412, a court might find that exclusive territorial arrangements were lawful under S. 412 even where it would conclude that they unreasonably restrained competition under the rule of reason.

We understand that Section 3 is intended to make clear that Section 2 of the bill is not to be interpreted as authorizing enforcement of exclusive territorial agreements by means of "price-fixing agreements, horizontal restraints of trade, or group boycotts" that would otherwise be unlawful. We do not read Section 2 as permitting such a result, and we recognize that the antitrust laws would potentially be available to challenge actual collusion among competitors even if S. 412 were enacted. However, it may be difficult to detect collusion at the wholesale level, especially where the number of firms in any geographic market is small or where they operate in localized markets. By the same token, there would also be difficulties in proving collusion, even where it exists.

Such difficulties could largely be avoided if the flexible and yet structured analysis of the present rule-of-reason approach were retained. The fact that we could proceed against actual collusion where it is detected under the standards of the bill does not negate the need to be able to challenge exclusive territorial arrangements under the antitrust laws as currently interpreted in those circumstances where they act to facilitate collusion and thereby pose a significant threat to consumer welfare. Because we do not believe that Section 3 of the bill alleviates our competitive concerns, it does not lessen our opposition to S. 412.

Proponents of S. 412 argue that it is necessary to clarify the law as to exclusive territorial arrangements in order to secure the economic benefits that such arrangements provide. However, brewers at present can and do enter into exclusive territorial arrangements with their wholesalers. Arrangements whereby a manufacturer assigns areas of "primary responsibility" to dealers without imposing absolute territorial limits pose negligible anticompetitive risks and generally have been upheld by the courts. 16/ The Supreme Court has expressly recognized that even "air-tight" exclusive territorial arrangements may promote competition by allowing a manufacturer to achieve efficiencies in the distribution of its products and has held that such arrangements are not unlawful unless they have unreasonable anticompetitive effects. Continental TV, Inc. v. GTE Sylvania, supra, at 58-59. Moreover, cases decided since GTE Sylvania, applying the economic analysis required by that decision, have recognized the economic benefits that vertical territorial arrangements may provide. 17/ In addition, the

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16/ See, e.g., Kestenbaum v. Falstaff Brewing Corp., 575 F.2d 564, 572-73 (5th Cir. 1978), cert. denied, 440 U.S. 909 (1979); Santa Clara Valley Distrib. Co. v. Pabst Brewing Co., 556 F.2d 942 (9th Cir. 1977); and other cases cited at ABA Antitrust Section, Antitrust Law Developments 73-74 n.495 (2d ed. 1984).

17/ At least one appellate court has expressly recognized such benefits with respect to the malt beverage industry. In Del Rio Distributing, Inc. v. Adolph Coors Co., 589 F.2d 176 (5th Cir.), cert. denied, 444 U.S. 840 (1979), the Fifth Circuit Court of Appeals upheld a jury verdict that Coors' exclusive territorial restrictions were reasonable because there was ample evidence showing that the territories "were essential to maintaining quality control and service in the retail market" and resulted in "a long-term effect of making each distributorship stronger, better able to compete with other brands and provide better service." 589 F.2d at 179. For

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present Administration has made clear, in our enforcement efforts, speeches, testimony, and now Guidelines, that we will avoid simplistic attacks on vertical arrangements where such arrangements are not likely to have a substantial anticompetitive effect. Moreover, our recent Vertical Restraints Guidelines provide an objective analysis for distinguishing nonprice vertical restraints, including exclusive territorial arrangements, that are anticompetitive from those restraints that are not. That analysis incorporates a two-step rule of reason. 18/ In Step One, the Department employs simple market structure tests to "screen out" from further scrutiny those restraints that are not likely to have anticompetitive effects. In Step Two, those restraints that are not "screened out" are examined more closely under a structured rule of reason

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17/ Footnote Continued

additional post-GTE Sylvania cases recognizing the beneficial effects of vertical territorial arrangements, see, e.g., Monsanto Co. v. Spray-Rite Service Corp., 104 S. Ct. 1464 (1984); Mendelovitz v. Adolph Coors Co., 693 F.2d 570 (5th Cir. 1982); Donald B. Rice Tire Co. v. Michelin Tire Corp., 638 F.2d 15, 16 (4th Cir. 1981), cert. denied, 454 U.S. 864 (1981); Red Diamond Supply, Inc. v. Liquid Carbonic Corp., 637 F.2d 1001, 1006 (5th Cir. 1981), cert. denied, 454 U.S. 827 (1981); Cowley v. Braden Industries, Inc., 613 F.2d 751, 755 (9th Cir. 1980), cert. denied, 446 U.S. 965 (1980); Abadir & Co. v. First Mississippi Corp., 651 F.2d 422, 426-28 (5th Cir. 1981); Davis-Watkins Co. v. Service Merchandise, 686 F.2d 1190, 1200-1201 (6th Cir. 1982); Service Merchandise Co., Inc. v. Amana Refrigeration, Inc., cert. denied, 104 S. Ct. 1718 (1984); Continental TV, Inc. v. GTE Sylvania, Inc., 684 F.2d 1132, 1136-39 (9th Cir. 1982); Newberry v. Washington Post Co., 438 F. Supp. 470, 475-76 (D.D.C. 1977).

18/ Guidelines at 21-38.

that assesses ease of entry, concentration levels, and other factors affecting the likelihood that market power can be exercised. Applying the structured rule of reason, the Department will only challenge those restraints that are likely to have anticompetitive consequences. 19/

Conclusion

In sum, the Department of Justice believes that enactment of S. 412 would be unnecessary and unwise. The Department of Justice, the Supreme Court, and numerous lower courts have expressly recognized the benefits from exclusive territorial arrangements and the courts have repeatedly held that such arrangements are not unlawful unless they have unreasonable anticompetitive effects. S. 412 might be held to legalize exclusive territorial arrangements even if they have substantial anticompetitive effects and would be held unlawful under proper application of the rule of reason.

19/ As indicated above, application of the analysis of the Vertical Restraints Guidelines reaffirms our conclusion that it would be unwise to enact special antitrust legislation applicable to the malt beverage industry. Due to industry structural characteristics, territorial restraints in the malt beverage industry would not likely be screened out in Step One; consequently, the Department would need to scrutinize exclusive territories in that industry more closely for possible anticompetitive effects. If the Department's Step Two review indicated there was an unreasonable risk to competition not outweighed by procompetitive efficiencies, the territorial restraints would be subject to challenge. The fact that territorial restraints in the malt beverage industry would not be screened out initially does not make them suspect. It does strongly suggest, however, that the malt beverage industry is an especially poor candidate for more lenient antitrust standards than currently exist.

There is simply no valid reason why the malt beverage industry should not continue to be subject to the same flexible and yet structured antitrust rule-of-reason analysis applicable to most other industries. The Department's 1985 Vertical Restraints Guidelines should contribute to proper application of this accepted judicial rule. In contrast, passage of S. 412 would further erode the general applicability and utility of the antitrust laws. Accordingly, the Department of Justice strenuously opposes enactment of S. 412.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer any questions you or any members of the Committee may have.

Senator DECONCINI. Next, we have Hon. Walter Winslow, Deputy Director, Bureau of Competition, Federal Trade Commission.

Mr. Winslow, because of our time limit, please concisely summarize your statement. I assure you that your full statement will be put in the record. We will ask you a few questions verbally and submit some to you for a written response.

STATEMENT OF WALTER T. WINSLOW, DEPUTY DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION, WASHINGTON, DC

Mr. WINSLOW. Thank you, Senator DeConcini. I appreciate this opportunity to deliver the views of the Federal Trade Commission concerning S. 412. The Commission is strongly opposed to the bill, which would, as has been stated, make exclusive territorial arrangements exempt from the antitrust laws if a new statutory standard, substantial and effective competition, is met.

I will briefly summarize the four principal points made in the Commission statement. First, if the new standard in this bill is intended as a shorthand version of the rule of reason, it is unnecessary and potentially dangerous.

In the 97th Congress, some proponents of this legislation claimed that the bill was necessary to insure that exclusive territorial arrangements were governed by the rule of reason rather than by the per se rule. That justification lacks merit because the U.S. Supreme Court has repeatedly affirmed that the rule of reason applies to all nonprice vertical restraints.

In the 98th Congress, some advocates of the legislation sought to justify it not as an affirmation of the rule of reason, but as a clarification of that method of analysis. According to this argument, the new standard would provide greater certainty and reduce litigation costs while not sacrificing any of the protection the public receives from the rule of reason.

This argument lacks merit for two reasons. First, there is no reason to believe that vertical restraints analysis could be made clearer simply by the adoption of a new statutory shorthand phrase. In fact, since it is unclear what the term means, we believe it would create confusion rather than clarity.

Second, the standard cannot both reduce litigation costs and provide the public the protection it currently receives. If the new standard is meant to be only a recodification of existing law, it would entail the exact same costs and uncertainty as the rule of reason.

The only way in which the new standard would reduce litigation costs would be for the new standard to exclude some of the inquiries that are presently undertaken under the rule of reason. By excluding such inquiries, the new standard would not truly be a clarification, but rather than exemption.

As is explained in more detail in the Commission's statement, the Miller-Tydings Act provides a warning of the dangers of shorthand phrases because a similar phrase in that act was interpreted as creating an almost total exemption from the antitrust laws.

The Commission's second point is that if the proposed standard is intended to make the rule of reason standard more lenient, its adoption would injure consumers. The rule of reason already takes into account suppliers' procompetitive reasons for imposing vertical restraints, and the rule of reason already permits exclusive territorial arrangements except in those circumstances when they are proved to injure competition and consumers.

Therefore, any less strict standard would necessarily legalize arrangements that are not justified and that lead to restricted output and higher prices.

Third, because the malt beverage industry exhibits the structural characteristics that make it particularly amenable to the anticompetitive use of territorial restriction, it is a particularly inappropriate industry in which to use a more lenient standard for scrutinizing exclusive territorial restraints.

Fourth, the Commission in general believes that enactment of special antitrust standards undercuts the ability of antitrust enforcement to preserve the Nation's free market economy.

As the National Commission for the Review of Antitrust Laws and Procedures aptly stated the last time that Congress, the Executive, and the public took an in-depth look at these issues, special antitrust status should be granted only where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose. The malt beverage industry has made no showing that would warrant such special treatment.

That concludes my summary of the Commission's statement.

Senator DECONCINI. Mr. Winslow, thank you very much. I have questions here from the chairman of the committee which I will submit to you for your response.

I would also like to ask you a question. It is my understanding that the Federal Trade Commission and the Carter Justice Department opposed the legislation in 1980 regarding the soft drink industry.

Has that lessened competition in the soft drink industry, in your judgment?

Mr. WINSLOW. The Commission has not done any studies that would permit me to analyze that. I do not know how I could answer that, Senator.

Senator DECONCINI. You do not know that it has?

Mr. WINSLOW. I do not know that it has.

Senator DECONCINI. Very good. Further, is there any reason to conclude that if there are no studies that indicate that the competition has been lessened in the soft drink industry that the same conclusion would not apply to the beer industry?

Mr. WINSLOW. Sir, there are very real differences between the two industries, I believe. The soft drink industry is highly concentrated, as is the beer industry. But in the beer industry, the State regulations, in fact, do create entry barriers which make exclusive territories significantly more dangerous than they would be in other industries.

Senator DECONCINI. What do you mean by "dangerous?"

Mr. WINSLOW. More likely to have anti-competitive effects.

Senator DECONCINI. Do you have any study or comparison of that legislation in States as it relates to beer territories and soft drink territories? I would like to see a comparison.

Mr. WINSLOW. We do not have studies. I think it is a common thing that States have laws, for example, that require a three-tier distribution system and has a variety of other restrictions on entry.

Senator DECONCINI. Could you supply us with some information on that?

Mr. WINSLOW. Yes, sir.

Senator DECONCINI. I am unaware of these laws and would like to see them for myself.

Mr. WINSLOW. Certainly.

Senator DECONCINI. Thank you. Although I have other questions, I will submit them because of time constraints.

The Senator from Illinois.

Senator SIMON. I thank you very much, Mr. Chairman.

Mr. Winslow, I am starting off, along with my colleague from Arizona, by requesting some background on the soft drink bill similar to this legislation. I was initially opposed to that bill and then I became convinced that, in fact, if you did not grant franchises you would end up with a few really big operators in this country who instead of protecting consumers would be protecting themselves and raising prices.

You stated in response to my colleague's question that due to the nature of malt beverage industry and because of certain State laws, this bill would have a more anti-competitive nature than it would in the soft drink industry. Could you clarify that a little bit?

Mr. WINSLOW. Yes, sir. I would like to begin by clarifying that the Commission is not claiming that exclusive territorial arrangements in either of these industries are necessarily bad.

Our concern is that what this legislation would do is to legalize those that are bad. It may be few, but what this legislation would do would legalize those few that are bad. Under the rule of reason, what the courts do is analyze all of the factors and if the justifications hold and the restraints are found to be, on balance, procompetitive, then the restrictions are legal.

Senator SIMON. If I may just interrupt at that point so that I understand what you are talking about, can you give me a specific example of a bad territorial arrangement?

Mr. WINSLOW. One of the principal concerns in this area, sir, would be that the use of exclusive territories might facilitate collusion among wholesalers, for example. If wholesalers were to try to establish a horizontal market allocation among themselves, and perhaps even against the wishes of the brewers, this legislation might facilitate that sort of collusion. That would be the kind of thing that the Commission would be concerned about.

Senator SIMON. Is that happening anywhere right now?

Mr. WINSLOW. We do not know that it is. All that we are asking, sir, is that we be permitted, when we are concerned that it is existing—when we believe that exclusive territories may be causing consumer harm and be unjustified, that we be permitted to look at it using usual antitrust standards.

Senator SIMON. If I understand your testimony—what you really would ask for is an amendment to this bill rather than completely opposing it?

Mr. WINSLOW. We oppose the biil; the Commission opposes the bill because, as I say, I believe the effect of the bill would be unclear. It is unclear whether it would declare that we use the rule of reason, in which case the Commission's objection simply is the enactment of a new standard may confuse the courts for some period of time.

If the bill is intended to relax the rule of reason standard, then the Commission's opposition would be more strenuous.

Senator SIMON. If we could amend the bill to outlaw the type of collusion you are talking about, would you still be opposed to the bill?

Mr. WINSLOW. Well, sir, the Commission's opposition is based in part upon the general principle that antitrust exemptions should not be allowed except where an affirmative case has been made for them.

So I suspect that amending the bill in that way would not eliminate the Commission's objections, though if the bill were clarified to state that it was the committee's intent solely to clarify that rule of reason treatment is intended to be used, that would take away one of the Commission's stated objections to the bill.

Senator SIMON. Thank you, Mr. Chairman.

Senator DECONCINI. The Senator from Alabama.

Senator HEFLIN. I do not have any questions.

Senator DECONCINI. Thank you, Mr. Winslow. My apologies for referring to you as Mr. Walters and several other names; no malice intended, I assure you.

[Prepared statement and responses to written questions follow:]

Statement of

The Federal Trade Commission

Presented by

Walter T. Winslow
Deputy Director, Bureau of Competition

on

S. 412
Malt Beverage Interbrand Competition Act

* * *

Committee on the Judiciary
United States Senate

May 14, 1985

Mr. Chairman and members of the Committee, I would like to thank you for this opportunity to present the views of the Federal Trade Commission concerning S. 412, the "Malt Beverage Interbrand Competition Act." This bill is almost identical to proposed legislation introduced during the last two Congresses.[1] The Commission presented testimony opposing the enactment of those bills and it would like to take this opportunity to express its strong opposition to the enactment of S. 412. I would be pleased to answer any questions following this statement.

The operative provision of S. 412 is Section 2, which directs that it shall not be an antitrust violation for brewers to enter into agreements with wholesale distributors granting distributors an exclusive right to distribute and sell a malt beverage in a defined area so long as that malt beverage is in "substantial and effective competition" with other malt beverage products in the relevant market. This provision would create a special new antitrust standard -- applicable only to the malt beverage industry -- for testing the lawfulness of what are known as "airtight" vertical exclusive territorial agreements. This proposed legislation, by importing a new and ambiguous standard into antitrust law, will at best have the effect of creating uncertainty and appears more likely to injure consumers by granting the malt beverage industry an unjustified exemption from the antitrust laws.

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[1] Unlike the versions of this bill introduced during the last two Congresses, S. 412 would apply to existing contracts as well as those contracts agreed to after enactment of the bill.

I will briefly set forth the reasons for the Commission's opposition to this bill and then elaborate upon each of them for the Committee's consideration.

First, if this new standard -- "in substantial and effective competition with other malt beverage products" -- is intended merely to restate the existing law,[2] it is superfluous and confusing. The new standard does not clarify the law, and there is a danger that it would be interpreted as a partial or total antitrust exemption rather than as a clarification.

Second, if the proposed statutory standard is meant to alter the existing rule of reason standard presently applicable to the malt beverage industry, its adoption would injure consumers. Under the rule of reason, exclusive territorial restraints are legal unless they are demonstrably anticompetitive and injurious to consumers; therefore, any more lenient standard would legalize arrangements that are anticompetitive and injurious to consumers -- arrangements that result in restricted output, less service, and higher prices.

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[2] The intent of S. 412 is not clear on its face. The intent of this bill could either be to restate the rule of reason standard which is presently applicable to exclusive territorial restraints in the malt beverage industry or to displace the rule of reason standard with a more lenient standard. In either event, for the reasons stated below, the Commission opposes enactment of this legislation.

Third, because the malt beverage industry exhibits the structural characteristics that make it particularly amenable to the anticompetitive use of exclusive territorial arrangements, it is a particularly inappropriate industry for a more lenient standard for scrutinizing exclusive territorial arrangements.

Fourth, to the extent that the new statutory standard is more lenient than the rule of reason standard, the proposed legislation would, in effect, be granting a special exemption from the antitrust laws to the malt beverage industry. In general, the enactment of special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve this nation's free market economy. The Commission fully supports Congress' traditional refusal to grant an industry special status under the antitrust laws unless and until there is compelling evidence of the unworkability of competition or of a clearly paramount social purpose. We submit that no such showing has been or could be made for the malt beverage industry.

I. A SHORTHAND VERSION OF THE EXISTING RULE OF REASON STANDARD IS UNNECESSARY AND DANGEROUS

In the 97th Congress, some proponents of the Malt Beverage Interbrand Competition Act claimed that the bill was necessary to ensure that exclusive territorial arrangements were governed by the rule of reason rather than by the *per se* rule. In 1977, however, the United States Supreme Court in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), had held that *all* nonprice vertical restraints are to be subjected to a rule of reason analysis. The sole stated basis for the need to affirm the applicability of the rule of reason was one California state court case that had applied a per se standard to a vertical restraint governing the distribution of distilled spirits. The United States Supreme Court has decided that case, however, and it reversed the decision of the California court in a way that eliminates any legitimate concerns that the malt beverage industry may have had.[3]

In the 98th Congress, some advocates of this legislation sought to justify the legislation not as an affirmation of the rule of reason, but as a means of clarifying how exclusive territorial arrangements should be analyzed under the rule of reason. According to this argument, the new standard would clarify the rule of reason; therefore, the standard would provide greater certainty and save litigation costs, while not sacrificing any of the protection consumers receive from the rule of reason.[4] This argument lacks merit for two reasons.

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[3] Rice v. Norman Williams Co., 458 U.S. 654 (1982). Finding that a state "designation statute" authorized conduct that would be per se illegal under federal antitrust law, a California Court of Appeal had held the statute invalid on its face. The U.S. Supreme Court reversed and remanded on the ground that the statute authorized conduct that might be found legal under the correct antitrust analysis, i.e., under a rule of reason test.

In the past, at least, some supporters of the bill have claimed that the bill is necessary to affirm the states' authority under the Twenty-first Amendement to regulate beer distributors. The Rice case, however, makes it clear that the federal antitrust laws do not preempt state laws governing exclusive territorial restrictions.

[4] See Malt Beverage Interbrand Competition Act: Hearings on S. 1680 Before the Senate Committee on the Judiciary, 98th Cong. 2d Sess. 45 (statement of Ernest Gellhorn). See also Id. at 89 (statement of William D. Young).

In the first place, there is no reason to believe that vertical restraints analysis could be made clearer by the adoption of a new statutory "shorthand" phrase. The term "substantial and effective competition" will not provide guidance. In fact, since it is unclear what the term means, it would create confusion rather than clarity.[5]

In the second place, the new standard cannot both save litigation costs and provide the public the protection it currently receives from the rule of reason. If the new standard is meant to be only a recodification of existing law, its application in a litigation setting would entail the exact same costs and uncertainty as are incurred under the application of the rule of reason. The new standard could save litigation costs only if it excluded one or more of the inquiries that are presently undertaken under the rule of reason. By deleting those inquiries, the new standard would not be a recodification of -- but would instead be a more lenient substitute for -- the rule of reason. As such, the new standard would injure consumers by legalizing restraints presently violative of the antitrust laws.

The danger associated with the adoption of shorthand statutory phrases is evidenced by how the judiciary interpreted a similar phrase in the Miller-Tydings Act,[6] which exempted "agreements prescribing minimum prices for the resale of a [branded] commodity which . . . is in free and open competition with commodities of the same general class produced or distributed by others" when such agreements are permitted in the state of resale. The legislative history of the Miller-Tydings Act indicates that Congress intended the "free and open competition" requirement to ensure that resale price maintenance agreements would be permitted only if there existed sufficient interbrand competition to prevent the agreements from having anticompetitive effects.[7] The courts, however, largely ignored the "free and open competition requirement,[8] and by the time

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[5] If the new standard is a codification of the rule of reason, the phrase "substantial and effective" would end up having a different meaning in every case, depending on the nature of the intrabrand restriction(s) and on the peculiar facts of each market.

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[6] Section 1 of the Sherman Act was amended in 1937 by the Miller-Tydings Act, which was repealed in 1975. 89 Stat. 801 (1975).

[7] See Cong. Rec., Vol. 81, Part F, 75th Cong., 1st Sess., pp. 7495 and 8141. In a discussion on the Senate floor concerning this Act, Senator Tydings stated:

> What does the amendment do? It permits a man who manufactures an article to state the minimum resale price of the article in a contract with the man who buys it for ultimate resale to the public, provided--and this "provided" is mountain-high--that the article about which the contract is written is in free and open competition with other articles. If it is not in free and open competition with other articles, no such contract may be written.

Id. at 7495. (emphasis supplied).

[8] For instance, one court construing the Act's language held that a manufacturer could meet the "free and open competition" standard merely by demonstrating the non-existence of horizontal agreements. Scovill Mfg. Co. v. Skaggs Pay Less Drug Stores, 275 P.2d 619, 625 (Cal. App. 1954), vacated on other grounds, 291 P.2d 936 (1955). (Continued)

Congress repealed the Miller-Tydings Act in 1975, the shorthand phrase was void of any substantive import.

In sum, if S. 412 is intended as an affirmation and clarification of the rule of reason, the Commission opposes the bill both because it is unnecessary and confusing and because of the danger -- exemplified by the Miller-Tydings Act experience -- that courts will read the bill as creating a partial or total antitrust exemption for exclusive territorial restrictions in the malt beverage industry.

II. ADOPTION OF ANY STANDARD MORE LENIENT THAN THE RULE OF REASON WOULD HARM CONSUMERS

Under the rule of reason, exclusive territorial arrangements are legal except in those circumstances in which it is proved that the arrangements injure competition and consumers. Therefore, the effect of a more lenient standard would be to legalize arrangements that would restrain output and increase prices.

The Commission believes that the rule of reason is the correct antitrust standard to apply to the territorial restrictions that a manufacturer unilaterally decides to impose on its distributors. Under the rule of reason, all relevant economic factors are examined to determine whether a challenged restraint on balance injures competition -- that is, whether the

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Another court held that the standard required only a showing that a purchaser "must be able to buy [the product] from more than one manufacturer." Eastman Kodak Co. v. Federal Trade Commission, 158 F.2d 592 (2d Cir. 1946), cert. den., 330 U.S. 828 (1947); See also Eastman Kodak v. Home Util. Co., 234 F.2d 766 (4th Cir. 1956), appeal dismissed 352 U.S. 956 (1957).

restraint's anticompetitive effects are outweighed by its procompetitive effects. Only if it is established that a practice has a net anticompetitive effect is the practice unlawful.[9]

For example, the Commission's Beltone[10] decision explains that an exclusive territorial arrangement that restricts intrabrand competition is illegal only if it results in harm to interbrand competition. The Commission concluded that because complaint counsel had not shown that the restraints decreased competition in the market as a whole, the restrictions challenged in Beltone did not cause the harmful interbrand effects necessary to violate the antitrust laws. In reaching its decision, the Commission identified the relevant competitive concerns[11], and explained the factors that must be examined in analyzing the likely effects of such a restraint, including the structure, performance, and dynamics of the industry, the seller's marketing strategy, and the likely efficiencies to be gained from the restriction.[12]

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[9] National Society of Prof. Eng'rs v. United States, 435 U.S. 679 (1979). The rule of reason standard permits consideration of factors which are unique to a particular industry, and it permits justifications that relate not merely to price competition, but also to competition based on quality and convenience. Id. at 689-90.

[10] Beltone Electronics Corp., 100 F.T.C. 68 (1982).

[11]
> In considering the negative impact on interbrand competition in this context, it is important to clarify that what we are concerned about are horizontal effects at either the manufacturer or dealer level. These effects can be manifested in several ways: a) as actual collusion among competitors which increases prices and restrict output; b) as an increased likelihood of anticompetitive interdependent behavior or oligopolistic pricing which yields results similar to collusion; or c) as enhancement or creation of market power on the part of one or more sellers.

Id. at 206-07.

Because the rule of reason takes into account suppliers' reasons for imposing vertical restraints, there is no basis for any claim that the new legislation is needed for brewers to operate distribution systems that promote competition and efficiency. For example, it has been argued that legislation is needed so that the industry can restrict the undesirable transshipment of their product. However, if transshipment restrictions in fact enhance competition among different brands of beer by assuring needed services (*e.g.*, stock rotation) or avoiding consumer purchases of stale beer, the rule of reason would not prevent the adoption of reasonable transshipment rules, including total bans in appropriate circumstances. Indeed, the Commission has modified a series of orders over the past year specifically to permit restrictions on transshipments meant to strengthen a seller's competitive position.[13] Unless such restrictions have adverse interbrand effects, they are currently legal; and if they do have adverse interbrand effects, they should not be legal.

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[12] *Id*. at 206-09. The Department of Justice has recently issued Vertical Restraints Guidelines. (Jan. 23, 1985)

In sum, because the rule of reason permits exclusive territorial arrangements except where they demonstrably injure competition and consumers, the effect of a less strict standard would be to legalize at least some arrangements that demonstrably injure competition and consumers. In other words, the effect of a less strict standard would be to legalize arrangements that restrict output and increase prices, without providing countervailing benefits.

III. THE STRUCTURE OF THE MALT BEVERAGE INDUSTRY MAKES IT PARTICULARLY INAPPROPRIATE FOR MORE LENIENT SCRUTINY UNDER THE ANTITRUST LAWS

The Commission believes that the malt beverage industry is an especially inappropriate one to select for lenient treatment in determining the legal propriety of exclusive territorial arrangements. Although the Commission believes that the use of exclusive territorial arrangements is procompetitive when their use serves legitimate marketing goals,[14] there are circumstances in which the use of such restraints may on balance be anticompetitive.

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[13] E.g., Magnavox Co., D. 8822 (July 13, 1983) (Commissioner Bailey dissenting in part); U.S. Pioneer Electronics Corp., C-2755 (Nov. 12, 1982) (granting partial relief); Lenox, Inc., D. 8718 (July 2, 1982) (Commissioner Bailey dissenting in part).

For instance, exclusive territorial arrangements can in some circumstances facilitate collusion among competitors. If there are regulatory barriers to entry at the dealer level -- as we understand is frequently the case in the distribution of malt beverages -- dealers could use exclusive territorial franchising as part of a scheme to eliminate competition and permit them to charge supra-competitive prices. If there is only one dealer, or are very few dealers, in an area where entry barriers exist, eliminating competition from dealers in other areas by the use of exclusive territorial franchises may permit the dealer or dealers to charge monopoly prices without fear of additional competition. In this instance, the anticompetitive effects of the collusive arrangement would not be mitigated by competition within each territory of manufacturers of different products.

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[14] For instance, when one of several competitors advertises a product also sold by its competitors, the benefit of that advertising investment (increased consumer sales) will redound to all purveyors of that product without regard to whether any individual seller financed the advertising investment or not. As such, dealers competing among themselves for sales of a particular manufacturer's product may have an incentive to avoid making such expenditures and instead attempt to garner the benefits of such investments made by others. In turn, procompetitive services such as promotion and quality control may not be provided or will be provided in less than optimal amounts. Ultimately, sales of this brand which is not actively promoted by its dealers will decline vis-a-vis sales of other competing product brands that are more vigorously promoted by its dealers.

However, the probability of such an anticompetitive scenario occurring is contingent upon the structural conditions of the industry in question. As a general proposition, in an industry where there are large numbers of competitors, low concentration, and low barriers to entry, the cost of collusion will be high and hence collusion is less likely to occur. However, in an industry where there are small numbers of competitors, high concentration, and high barriers to entry, the cost of collusion is lower and hence the risk of successful collusion is enhanced.

The malt beverage industry exhibits the structural characteristics that increase the risk that exclusive territorial arrangements will be used in an anticompetitive manner.[15] The brewing industry is quite highly concentrated. Four firm concentration in beer brewing increased at the national level from 46 percent in 1970 to 76.8 percent in 1984. Moreover, in most states, four firm concentration exceeds 80 percent. We also understand that wholesale concentration is high -- perhaps higher than brewer concentration -- though we do not have reliable data on the structure of the malt beverage wholesale distribution sector. Finally, we understand that the laws of many states create entry barriers that restrict entry into the wholesale distribution of malt beverages.

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[15] In 1978 the Commission issued a staff report on the brewing industry. This report found that concentration was increasing in brewing, but that brewing was generally competitive. However, the fact that an industry is functioning competitively would not justify granting an antitrust exemption that would legalize anticompetitive behavior. Further, the staff report is eight years old and did not analyze the structure of the malt beverage wholesaling industry, which at the regional level appears to be highly concentrated.

This point highlights one of the differences between the malt beverage industry and the soft drink industry, for which Congress in 1980 enacted an exemption[16] that appears similar to the one proposed in S. 412. While concentration in the soft drink industry is also relatively high, that industry does not have governmentally imposed barriers to entry that could prevent marketplace solutions to competitive problems. In addition, while the malt beverage wholesalers typically have investments in warehouses and trucks, their investments are generally smaller than those of soft drink bottlers with their plants and equipment. Furthermore, malt beverage wholesalers do not participate in the production of malt beverages, whereas the soft drink bottlers do engage in production. Finally, there are no antitrust cases that can be perceived as threatening the malt beverage industry. These considerations make it less appropriate to give the malt beverage industry special status under the antitrust laws.

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[16] The Soft Drink Interbrand Competition Act, 15 U.S.C. §§ 3501-03.

IV. ADOPTION OF A STANDARD MORE LENIENT THAN THE RULE OF REASON IS AN UNJUSTIFIED EXEMPTION FROM THE ANTITRUST LAWS

The malt beverage industry has made no showing that would warrant special treatment under the antitrust laws. Special antitrust status has only been grudgingly granted by Congress and the courts. In recent years, as both the Commission and the Congress know all too well, numerous industry groups have sought such special status under the antitrust laws. Congress has repeatedly refused their requests, reaffirming the Nation's commitment to a competitive economy and rejecting the piecemeal adoption of special exemptions, standards, or status for particular industries. As the National Commission for the Review of Antitrust Laws and Procedures aptly stated the last time Congress, the Executive, and the public took an in-depth look at these issues, special antitrust status should only be granted "where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose."[17]

The Commission is unaware of any evidence that would even justify special antitrust status for the malt beverage industry. We have seen no evidence suggesting that malt beverage wholesalers are different from wholesalers in other industries. They provide storage, refrigeration, and distribution services that are typical for wholesalers, especially in the food and beverage industries. Nor has the Commission seen anything to indicate that competition is unworkable in the malt beverage industry or that there is any overriding social policy that could be served by this legislation.

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[17] National Commission for the Review of Antitrust Laws and Procedures, Report to the President and the Attorney General 177 (1979). Proponents of S. 412 argue that the bill is not an exemption, but this argument is only semantic, because the bill would exempt the malt beverage industry from the usual antitrust prohibitions relating to exclusive territorial agreements.

VI. CONCLUSION

In summary, the Commission is strongly opposed to the adoption of S. 412. Since the antitrust laws currently permit procompetitive exclusive territorial arrangements, the only exclusive territorial arrangements that could be legalized by a weakening of current antitrust standards are those arrangements whose overall effect is anticompetitive and will injure consumers. Moreover, our view of competitive conditions in the malt beverage industry serves to reinforce our opposition to S. 412, for the industry appears to be one in which it is particularly important to safeguard against the anticompetitive use of exclusive territorial arrangements.

Finally, we are unaware of any evidence or argument that might justify the bill, and we believe that enactment of such an unjustified special exemption has the detrimental effect of undercutting the ability of antitrust enforcement to preserve this Nation's free market economy.

Mr. Chairman, I hope you will find this testimony helpful to your deliberations. I would be pleased to answer the Committee's questions.

FEDERAL TRADE COMMISSION
WASHINGTON D.C. 20580

OFFICE OF
THE CHAIRMAN

June 21, 1985

The Honorable Strom Thurmond
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

Thank you for your letter of May 17, 1985, to Walter T. Winslow, Deputy Director of the Commission's Bureau of Competition, requesting answers to three questions concerning Senate bill S. 412, the Malt Beverage Interbrand Competition Act. We are pleased to have this opportunity to respond to your questions and assist you and the Judiciary Committee in evaluating the competitive merits of this proposed legislation. Our response to your three questions is attached.

We would also like to take this opportunity to respond to a request for information that Senator DeConcini made of Mr. Winslow while he was testifying before the Judiciary Committee on May 14, 1985 concerning S. 412. Senator DeConcini asked Mr. Winslow why one might expect exclusive territorial arrangements to be more likely to be anticompetitive in the malt beverage industry than in the soft drink industry. Mr. Winslow responded that state regulation makes entry more difficult in the malt beverage industry. In turn, Senator DeConcini indicated that he had not been aware of the existence of such entry barriers and asked for further information on that issue.

As noted in the Commission testimony delivered by Mr. Winslow, some state regulations in the malt beverage industry increase the potential of collusion at the beer wholesaling level because they tend to make entry at the wholesale level more difficult. Although the Commission has itself not undertaken and knows of no study that comprehensively collects and evaluates such state legislation, we are aware of three types of state legislation that may make it more difficult to effect entry at the wholesale level of the malt beverage industry. First, many states have laws totally prohibiting vertical integration by malt beverage brewers. These laws prevent brewers from obtaining a license to become a malt beverage wholesaler. In addition, all states require malt beverage wholesalers to procure a license from the state in order to engage in business. The degree to which these laws make entry more difficult depends upon the particular qualifications required by each state for granting a malt beverage wholesale license. Finally, many states have regulatory barriers that make it more difficult for brewers to change wholesalers and/or change the territory assigned to particular wholesalers.

If you have any further questions concerning this issue, please contact Mr. Winslow at (202) 724-1540.

By direction of the Commission.

James C. Miller III
Chairman

Enclosures

Question # 1

Q: Does the FTC have any evidence that compares the experience of prices in states with exclusive territories for distributors of beer with states that do not have exclusive territories?

A: Exclusive territorial arrangements for distributors of beer are reported to exist to some extent in every state except Indiana, where state law prohibits such arrangements. In some states, all brewers use exclusive territories because they are required by law to do so. In other states, brewers use exclusive territorial arrangements only if and where they choose to do so.

The Commission has not undertaken any studies comparing the prices charged or services provided in states where exclusive territories are used with the prices charged or services provided in Indiana. Although three studies of this issue were submitted to the Senate Judiciary Committee in the ninety eighth Congress,*/ the Commission's staff does not believe those studies to be reliable. For example, each study examines the impact of exclusive territorial arrangements without discussing or controlling for other forces that may also mitigate competition among wholesalers or retailers (e.g., state regulations that prohibit vertical integration restrict brewers' ability to change dealers). Moreover, two of the studies focus only on price, ignoring the quality-of-service issue, and the Barsby study, which does discuss the service quality issue, provides no empirical data whatsoever concerning this issue.

Because the purported reason for the use of exclusive territorial arrangements is that their use provides dealers with an incentive to provide services, one would expect that where exclusive territorial arrangements are the result of voluntary agreements between brewers and wholesalers, the use of exclusive territorial arrangements would be associated with more services and higher prices. Even if there was reliable evidence indicating that the use of exclusive territorial restraints is associated with higher prices, this fact alone would not allow one to conclude that consumer welfare has been impaired because, in making such an evaluation, it is necessary to take into account the value of any additional services resulting from the use of exclusive territorial restraints.

Even if there were evidence indicating that exclusive territorial arrangements are in general associated with an increase in consumer welfare, this conclusion would not justify the enactment of S. 412, because S. 412 would legalize exclusive territorial arrangements in instances where their use results in supracompetitive prices and reduced output.

Question # 2

Q: Many states have enacted laws mandating or establishing exclusive territories for distribution of beer. In your view, do those laws confer state-action immunity from Federal antitrust laws on private parties, and, if so, does the bill before us add anything with respect to those states?

A: Under existing law, states have the ability to confer state action immunity from federal antitrust law on private parties by enacting a regulatory scheme that satisfies the two-prong test enunciated in California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97,105-106 (1980).

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*/ Malt Beverage Interbrand Competition Act: Hearings on S. 1680 Before the Senate Committee on the Judiciary, 98th Cong. 2d Sess. at 57, 77, 109 (Studies of Steve L. Barsby, John W. Jordan, Richard B. Willett).

See also Southern Motor Carriers Rate Conference, Inc. v. United States, 105 S. Ct. 1721 (1985). The Midcal test requires first, that the parties' conduct be undertaken pursuant to a clearly articulated and affirmatively expressed state policy to displace competition, and second, that the parties' conduct be actively supervised by the state. In states where exclusive territorial restraints are mandated, private parties would presumably be able to meet the first prong of the Midcal test. In other states, additional analysis would be necessary to determine whether the state intended to displace competition with a regulatory scheme. Additional analysis would also be necessary to determine whether particular state regulatory schemes constitute "active supervision" and hence meet the second prong of the Midcal test.

Although it is not possible to generalize about whether existing state laws provide state action immunity, it is clear that any state desiring to confer state action immunity on private parties can do so by adopting regulatory schemes that meet the requirements of the Midcal case. Hence there is no need for the enactment of legislation to protect or promote the ability of states to confer state action immunity. Moreover, as drafted, S. 412 would do nothing to enhance the ability of states to confer state action immunity. S. 412 deals solely with the antitrust standard to be applied; none of the bill's provisions even addresses any issues concerning state regulation.

Question # 3

Q: Your written statement indicates that the Bill before us would establish a different standard to exclusive territories for beer distribution from the standard applied to other exclusive territories under the rule of reason. Is there any special reason for adopting a different standard for beer distribution?

A: The Commission's written testimony on S. 412 states that it is unclear whether the standard incorporated in the legislation -- that "substantial and effective competition" must exist -- is intended merely to be a codification of the existing rule of reason standard or whether it is intended to create a special, more lenient antitrust standard. Even if the bill is intended merely to restate the existing law, the Commission opposes the bill on the grounds that it is superfluous and confusing.

If the bill is meant to alter the existing rule of reason standard presently applicable to the malt beverage industry, the Commission's opposition to the bill is based on different considerations. First, a more lenient standard would injure consumers because it would legalize arrangements that result in restricted output and higher prices. Second, the malt beverage industry is a particularly inappropriate industry to single out for a more lenient antitrust standard because this industry exhibits characteristics that increase the likelihood that exclusive territorial arrangements would be used to facilitate anticompetitive behavior.

Senator DeConcini. The next witness is Mr. Constantine, assistant attorney general for antitrust, from New York.

Mr. Constantine, we have time constraints, as I hope you can understand. We appreciate your being here and we will put your full statement in the record, but for now please summarize it in 5 minutes. Thank you.

STATEMENT OF LLOYD CONSTANTINE, ASSISTANT ATTORNEY GENERAL FOR ANTITRUST, STATE OF NEW YORK, ON BEHALF OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Mr. Constantine. Thank you, Mr. DeConcini. We have some price information, but I will get to that in due course.

Mr. DeConcini and members of the committee, on behalf of the National Association of Attorneys General and Attorney General Robert Abrams, I am honored to have this opportunity to present our views on S. 412.

Exemptions from the antitrust laws should not be granted to any industry unless there has been a compelling demonstration that competition has failed to perform its traditional function of allocation. The proponents of this legislation cannot make such a showing.

The rationale for this bill and the name Interbrand Competition Act are based on the contention that the predominant effect of beer distribution monopolies will be procompetitive.

However, the Supreme Court in the *Sylvania* case ruled that exclusive distribution arrangements only violate the antitrust laws if they can be conclusively shown to have a predominantly anticompetitive effect.

To be illegal under the Sylvania standard, a vertical restraint must stifle intrabrand competition without having any significant procompetitive effect in the interbrand market. A restraint must encourage collusion in or exclusion from the marketplace.

This standard presents those challenging distribution restraints with an enormous, if not impossible, burden to overcome in antitrust litigation. S. 412 will weaken this already toothless standard of Sylvania. It will exempt activity proven to be anticompetitive after a thorough rule of reason analysis.

The bill's proponents have urged three justifications—the stale beer argument, the transshipment argument, and litigation. I will not bother the committee with the stale beer issue, which is discussed in my written statement.

The bill, as claimed, would prevent transshipment, which is said to be a ruinous form of competition. It allegedly results in business failures of franchise wholesalers who are unable to compete effectively against a transshipper who gets a free ride from the franchise wholesaler.

Transshipment is merely one form of free and open competition that results in lower retail prices and an increased number of sellers, and I will give you some price information.

Transshipment is always instituted by the very franchise distributors who are purported to be the victims of the practice. In New York State, which had an open beer market until Anheuser-Busch and Miller Brewing instituted distribution monopolies in 1983, Busch and Miller distributors lawfully transshipped their beer throughout the State. The brewers were not satisfied with their right to sell their beer to whomever they pleased and imposed airtight restrictions on the resale of beer by their distributors and granted them exclusive distribution arrangements covering areas encompassing millions of people.

There is no evidence in New York State of the business failure of any franchise beer distributor because of transshipment.

The risk of litigation is part of the price of doing business in America and is a risk that can only be eliminated by depriving someone of the fundamental right to seek redress in the courts for a perceived wrong.

Busch and Miller, who control well over half of the national beer sales, were secure enough to institute territorial monopolies in 1983 in the face of the current law and the current standard. This bill will not prevent litigation, for the reasons that were summarized by Mr. Rule and Mr. Winslow.

The regrettable enactment of the Soft Drink Interbrand Competition Act in 1980 has emboldened the beer industry to seek the same type of legislation. If this bill succeeds, the already lengthy line of industries seeking antitrust immunity will only grow longer. The business community will labor under a byzantine array of diverse and shifting standards. That is why the National Association of Attorneys General passed a resolution strongly opposing this bill.

This bill will also ensure a more concentrated wholesaler market in an industry which is increasingly concentrated at both the brewer and the wholesaler level.

The committee is no doubt aware of the vertical restraints guidelines which Mr. Rule alluded to in his testimony. These guidelines were issued in the guise of an interpretation of current rule of reason standards. It is my personal opinion that the guidelines were an attempt to further weaken the standards set forth by the Supreme Court in the *Sylvania* case and convince the courts to treat certain per se unlawful horizontal restraints as if they were vertical practices and subject to rule of reason analysis.

There is virtually no vertical restraint which the Antitrust Division would ever challenge under these guidelines, which, in fact, explicitly encourage the use of such restraints.

The beer industry is perhaps the single exception, where proper application of the guidelines should lead to a challenge. Mr. Rule and Mr. Baxter before this committee previously testified that this industry appears to be one in which the risk that widespread use of exclusive territories may produce anticompetitive effects is almost uniquely high.

Since virtually all brewers now use exclusive territorial arrangements, one would have expected a Federal enforcement action to have ensued. Because none have, the attorney general in New York, Attorney General Abrams, has reluctantly commenced a formal investigation of these practices in New York State. I say reluctantly because this is a truly national problem in scope.

The record of antitrust enforcement also demonstrates that highly concentrated industries like this breed price collusion. These factors caused us to predict large price increases when Busch and Miller adopted exclusive territories in 1983.

In price surveys conducted by the New York City Department of Consumer Affairs, which are annexed to my written testimony, soft drink prices have——

Senator DECONCINI. Mr. Constantine, your time is up. Please conclude your testimony.

Mr. CONSTANTINE. Yes.

Senator DECONCINI. Go ahead.

Mr. CONSTANTINE. Soft drink prices in that period of time have been up 6.7 percent, Senator, and beer prices have been up 35.7 percent in a period since exclusive territories were instituted in New York—35.7 percent.

Senator DECONCINI. How does that compare with the rate of inflation during that period of time?

Mr. CONSTANTINE. The rate of inflation in New York, Senator——

Senator DECONCINI. During that same period of time.

Mr. CONSTANTINE. During that period of time it is roughly 6 percent, and that is roughly equivalent to——

Senator DECONCINI. No; I am talking about national inflation. What was national inflation during that period of time?

Mr. CONSTANTINE. Senator, the only figure that I have is that inflation in New York during that period of time was roughly 6 percent, Senator. During that period of time, soft drink prices——

Senator DECONCINI. Is it not fair to conclude that the inflation as a national figure was far greater than 6 percent during that period of time?

Mr. CONSTANTINE. I have no information on that, Senator. I do not think that the inflation rate during the last 2 years was 35.7 percent, Senator.

Senator DECONCINI. No. I am just asking what it was.

Mr. CONSTANTINE. I do not have information on that, Senator.

Senator DECONCINI. Thank you.

Mr. CONSTANTINE. I do have information germane to New York.

Senator DECONCINI. The balance of your statement will be in the record. Thank you, Mr. Constantine. Let me just ask you this: How do territorial limitations hurt consumers if there is a substantial and effective competition among beer producers and distributors? Would not interbrand competition fully protect consumers, as the Supreme Court pointed out in the *Sylvania* case?

Mr. CONSTANTINE. Senator, we think that a 36-percent price rise is an indication that consumers have been severely harmed. We in New York subscribe to the notion that a huge price increase like that is indication of consumer harm. We do not subscribe to the concept of consumer welfare, which is a buzz word of the Chicago School of Economics, which has nothing to do with the welfare that most consumers would recognize to be their own.

Senator DECONCINI. Would you conclude that the soft drink exemption granted in 1980 did the same thing, cost the consumer more?

Mr. CONSTANTINE. There are indications that the price of soft drinks went up after 1980, but I have statistics on the price of beer that went up after this particular type of restraint was imposed in 1983.

Senator DeConcini. Do you have any evidence as to the cost of soft drinks going up in New York or anyplace else as a result of that legislation?

Mr. Constantine. No, Senator. We have indication that the prices of soft drinks are up 6 percent in the last 2 years and that beer prices are up 36 percent.

Senator DeConcini. Thank you. I have some questions from the chairman that I will submit to you, if you would answer them.

The Senator from Illinois.

Senator Simon. I have no question, Mr. Chairman. Thank you.

Senator DeConcini. The Senator from Alabama.

Senator Heflin. No questions.

Mr. Constantine. Thank you, Senator.

Senator DeConcini. Thank you very much.

[Prepared statement and responses to written questions follow:]

STATE OF NEW YORK DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL ROBERT ABRAMS

STATEMENT OF

LLOYD CONSTANTINE
ASSISTANT ATTORNEY GENERAL
IN CHARGE
ANTITRUST BUREAU

Mr. Chairman and members of the committee. On behalf of the National Association of Attorneys General and Attorney General Robert Abrams, I am honored to have this opportunity to present our views on S. 412 ("The Malt Beverage Interbrand Competition Act"), a bill that would grant an antitrust exemption to arrangements which create territorial monopolies for the distribution of beer in this country.

We maintain the strong opposition to this bill expressed in Attorney General Abrams previous written submissions to the committee. Recent developments in the beer industry merely confirm our worst expectations of the pernicious effects which result from distribution monopolies. This bill would facilitate the formation of these monopolies and put them beyond the reach of current federal antitrust standards concerning non-price vertical restraints of trade.

S. 412 is a meritless piece of special interest legislation, designed solely to provide one industry with license to eliminate competition and thereby nullify the basic guidance mechanism of the American system of free enterprise. Exemptions from the antitrust laws should not be granted to any industry unless there has been a compelling demonstration that competition has failed to perform its traditional function of allocation.

In 1979, the Report of the President's National Commission For the Review of Antitrust Laws and Procedures concluded that exemptions from the national policy of free market competition, fostered by vigorous antitrust enforcement, should only be made when there is "compelling evidence of the unworkability of competition or a clearly paramount social purpose." The proponents of this legislation have not and cannot make such a showing.

The proferred rationale for this bill, and indeed its name, ("Interbrand Competition Act") are based on the contention that the predominant effect of beer distribution monopolies will be pro-competitive. However, the Supreme Court in Continental TV Inc. v. GTE Sylvania Inc. 433 U.S. 36 (1977) ruled that exclusive distribution arrangements only violate the antitrust laws if they can be conclusively shown to have a predominantly anti-competitive effect. To be illegal, under the GTE Sylvania standard, a vertical restraint must stifle intra-brand competition without having any significant pro-competitive effect in the interbrand market. The restraint must encourage collusion in or exclusion from the marketplace.

This standard presents those challenging distribution restraints with an enormous, if not impossible, burden to overcome in antitrust litigation. S. 412 further weakens the already toothless standard of GTE Sylvania. Therefore, it cannot possibly foster competition, but can only exempt from an antitrust remedy activity proven to be anti-competitive after a thorough "rule of reason" analysis.* The merits aside, the so-called "Malt Beverage Interbrand Competition Act" should be rejected because its very name amounts to a fraudulent misrepresentation, by implying that it would foster rather than discourage competition.

Because S. 412 cannot possibly aid competition and can only immunize proven anti-competitive conduct, a rationale for its adoption must be found in some societal goal, superior to the goals of free enterprise. Proponents of this bill have urged three justifications, arguing that it is necessary to solve the problem of stale beer, to eliminate transshipment of the product and avoid costly antitrust litigation.

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* The current standard has not prevented almost uniform adoption of exclusive distribution arrangements in the American malt beverage industry.

Even if the alleged problem of stale beer existed, we would suggest it is not of such paramount public concern as to override the policies of the antitrust laws which have been called the "Magna Carta" of the American system of free enterprise. Furthermore, many far more perishable food products have long been successfully distributed without establishing exclusive territorial monopolies. Less drastic means are available to protect consumers against the sale of overage beer. Foods such as milk and bread, for example, are clearly labelled with expiration dates. Beer and ale are so labelled in countries such as Great Britain.

The second justification concerning the prevention of transshipment really just restates the specious argument concerning competition. Transshipment is said to be a ruinous form of competition. It allegedly results in the business failures of franchised wholesalers, who are unable to compete effectively against the transshipper who gets a "free ride" from the franchised wholesaler's advertising and promotional expenditures.

Transshipment is justifiably regarded by the antitrust laws as merely one form of free and open competition, that results in lower retail prices and an increased number of sellers in the marketplace. Furthermore, transshipment is always instituted by the very franchised distributors who are supposed to be the victims of the practice. Under current antitrust law they are perfectly free to transship or not, and to pass on their promotional costs to whomever buys the product.

In New York State, which had an open beer market until Anheuser-Busch and Miller Brewing instituted distribution monopolies in 1983, Busch and Miller distributors lawfully transshipped their beer throughout the State. The brewers were not satisfied with their prerogative to sell their beer to whomever they pleased and imposed airtight restrictions on the resale of beer by their distributors. In return, the distributors were granted monopolies in geographical markets, which in some cases encompassed millions of people.

Carrying the banner of the victimized distributors, the beer manufacturers have asked Congress to give them an anticompetitive weapon to bludgeon the distributors into complying with this scheme of distribution monopolies.

The National Institute of Economics and Law has testified before the House Judiciary Committee's, Subcommittee On Monopolies and Commercial Law that "[t]here is no empirical evidence to indicate that a "free-rider" problem exists, i.e. the sale of beer by some distributors at the advertising expense of others." Neither is there any evidence in New York State of the business failure of any franchised beer distributor because of transshipment. Moreover, the antitrust laws were enacted to protect competition rather than competitors.

The third argument advanced in support of this bill is that it is necessary to protect the industry against protracted and costly litigation. The risk of litigation is part of the price of doing business in America. It is a risk that can only be eliminated by depriving someone, in this case competitors and consumers, of the fundamental right to seek redress in the courts for a perceived wrong. Nor is litigation a very substantial risk to the entities that seek the protection of this legislation. Anheuser-Busch and Miller Brewing, the giant brewers who control well over half the national beer sales, were secure enough to institute territorial monopolies in 1983 in the face of current law and the risk of antitrust litigation. They are in a far better financial position than their potential adversaries to conduct protracted litigation, which can only be successful if the distribution monopolies are conclusively shown to be an unreasonable restraint of trade.

Furthermore, this bill will not even prevent litigation. Under S. 412 exclusive territorial arrangements would be deemed lawful so long as the particular brand of beer was in "substantial and effective competition" with other brands of beer. Nowhere is this term defined in the bill and its meaning is ambiguous. This new standard's relationship to the traditional "rule of reason" standard, utilized by the courts to determine the lawfulness of exclusive territorial arrangments, is not expressed. Accordingly, rather than protect against litigation, this will assure more litigation and require the Court's to define a new standard.

The regrettable enactment of the Soft Drink Interbrand Competition Act in 1980 has emboldened the beer industry to seek the same type of special interest legislation. If S. 412 succeeds, the already lengthy queue of industries seeking antitrust immunity will only grow longer. The antitrust laws have already been sapped of much vitality by restrictive decisions like the Illinois Brick case and an enforcement policy at the Federal level which vacillates between neglect and open hostility to the punishment of criminal retail price-fixers. Further erosion through exemptions like that proposed in S. 412 will result in a patchwork of differing antitrust rules for each industry, further restricting effective antitrust enforcement. Furthermore, the business community will labor under a byzantine array of diverse and shifting standards. This is why the National Association of Attorneys General passed a resolution strongly opposing this bill, specificially, and others of its genre which would weaken antitrust standards for selected industries.*

This bill is also clearly inimical to the interests of the nation's beer consumers. It will ensure a more concentrated wholesaler market in an industry which has become highly concentrated at both the brewer and distributor level, and in which the trend toward greater concentration continues.

The Committee is aware, no doubt, of the Vertical Restraints Guidelines issued by the United States Department of Justice on January 23, 1985. These guidelines were issued in the guise of an interpretation of current "rule of reason" standards applicable to non-price vertical restraints. It is my personal opinion that the guidelines are an attempt to further weaken the standards set forth by the Supreme Court in the *GTE Sylvania* case and convince the Courts to treat certain *per se* unlawful horizontal restraints as if they were vertical practices and subject to "rule of reason" analysis. Antitrust practitioners recognize that there is virtually no vertical restraint which the Antitrust Division could ever challenge under the Guidelines, which in fact explicitly "encourage" the use of such restraints by businesses.*

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* A copy of the resolution is annexed to this testimony.

The beer industry is perhaps the single exception, where proper application of the Guidelines should lead to a challenge of exclusive distribution arrangements. William F. Baxter, former Assistant Attorney General in charge of the Antitrust Division testified before this Committee that ".. this industry appears to be one in which the risk that widespread use of exclusive territories may produce antitcompetitive effects is almost uniquely high."** Given Mr. Baxter's further admission that "we understand that virtually all brewers use exclusive territorial arrangements", one would have expected a federal enforcement action to have ensued. Because none has, Attorney General Abrams has reluctantly commenced a formal investigation of these practices in New York State. I say "reluctantly" because this problem is truly national in scope and strains the modest resources of even the largest state antitrust enforcement offices.

The "Interbrand Competition Act" ignores the true nature of competition within the beer industry. Beer prices are kept down by intrabrand competition, that is, competition between distributors of the same brand. The beer consuming public has significant brand loyalty created in large measure by the millions of dollars expended to create distinct brand identities. If a single wholesaler controls a particular brand, there is a strong incentive for it to charge whatever price the market will bear. Competition from other wholesalers or distributors selling the same brand acts as a lever against monopoly pricing. Moreover, even the minimal effects of interbrand competition are often rendered illusory because the same wholesaler serves as an exclusive distributor for different brands in the same area, and thus there is no motive for the distributor to compete for sales by lowering his price for any particular brand. The record of antitrust enforcement also demonstrates that in highly concentrated industries with a limited number of distributors, price collusion often occurs. All these factors caused Attorney General Abrams to predict large price increases when Anehuser-Busch and Miller adopted distribution monopolies in 1983. Although not all the data is conclusive, the price surveys in New York confirm major price increases attributable to the enforcement of territorial exclusivity.

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* *Vertical Restraints Guildelines*, U.S. Department of Justice (January 23, 1985) page 1 § 1.

** Testimony of William F. Baxter,Before Committee on The Judiciary, November 7, 1983, pages 6 and 7.

In price surveys conducted by the New York City Department of Consumer Affairs, soft drink prices have risen 6.7% in the period from December 1982 to April 1985 whereas the beer prices surveyed have risen approximately 35.7%. Consumer Affairs used Budweiser and Miller High Life as the beer brands surveyed.* In 1983 New York also adopted a soft drink and beer bottle deposit law which was expected to raise the retail prices of beer and soft drinks in roughly equivalent amounts. We draw a logical conclusion from these startling figures. The grossly disproportionate rise in beer prices is due in large part to the effects of the distribution monopolies instituted by Anheuser-Busch and Miller Brewing in 1983.

In summing up, I will quote from a document submitted to the New York State Legislature when in 1976 it was proposed that territorial monopolies for beer distribution be mandated by law. The case against S. 412 could not be stated more succinctly.

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* We have annexed the certified price surveys of the New York City Deprtment of Consumer Affairs.

> "If enacted this bill would grant territorial monopolies for the sale of beer to present beer wholesalers" .... The bill would restrict competition between brands. Many of the specialty, imported and marginal brands would be forced out of the New York State market. Concentration of market power would follow and, with it, higher consumer prices and reduced consumer choice .... The real ojbective of this bill, and of franchise protection laws in general, is special interest favoritism, granting wholesalers a perpetual hold on the distribution of products and foreclosing by legislation any competition.... The absence of any competition would inevitably precipitate a price rise."

The memorandum I quote from was submitted by the Miller Brewing Company. A memorandum similar in content was also submitted by the United States Brewers Association on behalf of its members which included, Anheuser-Busch, Miller Brewing and the Joseph Schlitz Brewing Company. Copies of both memoranda are annexed to my written testimony for the Committees' information.

The public interest would be well served by a resounding defeat for this ill-conceived and selfishly motivated legislation.

XVI.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
ANNUAL MEETING
July 15 - 18, 1982
Mackinac Island, Michigan

RESOLUTION

OPPOSING LEGISLATION THAT WEAKENS ANTITRUST STANDARDS FOR SPECIFIC INDUSTRIES

WHEREAS, further attempts are being made in the 97th Congress to obtain special exemptions from the antitrust laws, such as the Malt Beverage Interbrand Competition Act, which provides a special exemption to beer manufacturers to enforce territorial restrictions in their contacts with licensees; H.R. 6467, which would exempt professional team sports leagues from antitrust liability in relocation of league teams and revenue sharing agreements; and H.R. 6262, which would provide an immunity to companies involved in joint research; and

WHEREAS, present antitrust standards adequately protect the interests of such businesses; and

WHEREAS, this legislation weakens antitrust standards and invites other industries to seek similar exemptions from the antitrust laws;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Attorneys General:

1. Reaffirms its strong opposition to legislation that weakens antitrust standards for specific industries; and
2. Authorizes the General Counsel to transmit these views to the Congress, the Administration, and other appropriate officials.

Attorneys General Linley E. Pearson of Indiana and Tyrone C. Fahner of Illinois dissent.

BOND, SCHOENECK & KING
ATTORNEYS AT LAW
ONE LINCOLN CENTER
SYRACUSE, N. Y. 13202

PHONE (315) 422-0121

ALBANY OFFICE
111 WASHINGTON AVENUE
ALBANY, N. Y. 12210
PHONE (518) 462-7421

LES A. SCHOENECK, JR.
ARD W. CANNON
ERT E. STRATTON
IAM F. FITZPATRICK
CY W. FERGUSON
E W. HORNBECK
STER M. KING, JR.
ROLE EVANS, JR.
NCIS E. MALONEY
NCIS B. PRICE
ES E. WILSON
ON M. ZAMM
ET D. McCARTHY
MOND W. MURRAY, JR.
EPH J. LAWTON, JR.
MES C. SHATTUCK
IS M. OSMIND
N J. BEE
N A. BEACH
RLES T. BEECHING, JR.
IAM P. BURROWS
N M. FOSTER
ERT W. ROPP
HUR E. BONGIOVANNI
N B. FERGUSON
RLES T. MAHON, JR.
ERT E. HODES
JON L. BERGAN
BERT D. PITTARELLI
NCIS E. MALONEY, JR.
LES A. McDONALD

WILLIAM B. JOHNSON
1919-1966
GEORGE H. BOND, JR.
1924-1973
JOHN C. KINNEY
1947-1974

LLOYD G. FIX
JAMES D. FITZPATRICK
ROBERT J. HUNT
JOHN W. HORNBECK
STEPHEN L. JOHNSON
JAMES E. MAGAIN
STEPHEN M. COHEN
DAVID M. GARBER
DAVID M. DEXTER
THOMAS S. EVANS
H. DEAN HEBERLIG, JR.
THOMAS J. GROGAN
RICHARD L. SMITH
CARL E. McWORDOTT
GARY R. GERMAIN
JAMES P. McDONALD
STEPHEN J. VOLLMER
B. PAUL BATTAGLIA
GARY M. CLARK
JAMES E. WALSH III
L. LAWRENCE TULLY III
MICHAEL R. SHANLEY

March 22, 1976

MEMORANDUM IN OPPOSITION
ON BEHALF OF THE
MILLER BREWING COMPANY

S.7524-A Stafford – A.11352 Griffin

AN ACT to amend the General Business Law
to add a new article regulating franchise
contracts for the sale of beer.

The MILLER BREWING COMPANY strongly opposes this bill.

If enacted, this bill would grant territorial monopolies for the sale of beer to present beer wholesalers. Entry into the beer wholesale business would be restricted to those already in it. The bill permits a beer wholesaler to sell his business to anyone willing to pay the price sought by the franchisee. The franchisor would have to consent to the transaction or be forced to buy the franchise back from the franchisee for its "fair market value." Franchisors would find themselves in the business of buying up their own franchises or else accepting as their representatives, franchisees short on business ability and lacking knowledge of the industry.

The bill would restrict competition between brands. Many of the speciality, imported and marginal brands would be forced out of the New York State market. Concentration of market power would follow and, with it, higher consumer prices and reduced consumer choice.

In effect, this bill and similar "franchise protection acts" are straight-jackets that bind brewers to wholesalers while at the same time relieving wholesalers of their responsibility to operate satisfactorily as representatives of brewers. By perpetrating the status quo, monopolies are created which prevent new persons from becoming beer wholesalers. The real objective of this bill and of franchise protection laws in general, is special interest favoritism, granting wholesalers a perpetual hold on the distribution of products and foreclosing by legislation any competition.

Wholesalers without competition or incentive might become complacent in dealing with retailers. Service deterioration would result and lead to deterioration of wholesaler-brewer relationships. The absence of competition would inevitably precipitate a price rise.

Memorandum in Opposition (S.7524-A/A.11532)

Recent decisions in Nebraska and Missouri have invalidated franchise protection laws and regulations.

On July 18, 1974 in the consolidated cases of United States Brewers Association, Inc. v. Nebraska and Joseph E. Seagram & Sons, Inc., et al v. Nebraska, 220 N. W 2d 544, the Nebraska Supreme Court unanimously reversed a lower court decision and held that the Nebraska statute regulating franchises between manufacturers of alcoholic beverages and their distributors was invalid as an unconstitutional impairment of the rights of manufacturers to terminate distributorships, establish additional distributorships, and market their products. In the opinion, Justice Boslaugh stated, ". . . the act in question is an unreasonable invasion of the personal and property rights of the plaintiff and must be declared unconstitutional."

The Missouri Supreme Court reached a similar result on March 12, 1975 in Brown-Foreman Distillers Corp, et al v. Stewart, 520 S. W. 2d 1. In that case, the court upheld a lower court case which invalidated on constitutional grounds portions of an administrative regulation which purported to regulate termination of liquor franchises. The lower court held that the regulations were so vague and ambiguous that they were constitutionally offensive.

The inherent right of persons to contract with others is a principle of Anglo-Saxon law. Contracts are voluntary relationships mutually undertaken and the state should not impair that relationship.

Economic paternalism is abhorrent to our concept of free enterprise. Brewers and wholesalers should be free to negotiate their own franchise agreements. Brewers should be accorded the same freedom in selecting wholesalers accorded manufacturers of other products. They should not be discriminated against.

The sale of beer is already highly regulated. If beer wholesalers fear coercion from brewers, present federal and state antitrust laws, as well as beverage control laws and regulations provide adequate protection. No wholesalers, to our knowledge, claim or have claimed that present laws are inadequate to protect them from coercion.

The bill purports to maintain the quality of beer. This is nonsense. The best way to maintain the quality of beer is to insure free competition. No brewer could remain in business very long if its beer was not of consistent high quality.

The bill should be defeated.

United States Brewers Association, Inc.
EXECUTIVE PARK TOWER, STUYVESANT PLAZA, ALBANY, N.Y. 12203
(518) 459-4551

DANIEL [illegible] ADAMS
VICE PRESIDENT · NORTH EASTERN REGION

MAY 3, 1976

MEMORANDUM IN OPPOSITION
on behalf of the
UNITED STATES BREWERS ASSOCIATION, INC.

S. 7524-A, Stafford   A. 11352-A, Griffin

AN ACT to amend the General Business Law
to add a new article regulating franchise contracts
for the sale of beer.

The United States Brewers Association, Inc., the nation's oldest incorporated trade association, representing New York State's newest corporate brewing citizens The Joseph Schlitz Brewing Company, and Miller Brewing Company, and other brewe selling over 90 percent of the nation's beer production, strongly opposes this bill.

This bill would restrict the beer wholesale business to approximately 160-180 N.Y.S. Class C licenses, while granting territorial monopolies to these businesses. The above presently wholesales approximately 84.5 percent of the State's beer business which is valued at about $633.15 million. They average 5.8 beer brands and 35.6 assorted packages of beer per business. Twelve N.Y.S. counties do not have a wholesale beer business in operation. 267 brands are authorized for sale in N. Y.S. This bill, while granting exclusive control of 267 beer brands to 160-180 businesses forecloses competition, and perpetuates the status quo.

There are approximately 448 other Class C licensed businesses who sell at retail, and approximately 43,861 on and off premise licensees who sell at retail. Licensed businesses could only buy beer from the proposed wholesale franchise distributor, or the primary distributor in a designated area. 160-180 "primary distributors" may become complacent in dealing with "out of the way" or "small purchase" retailers. The bill is not in the best interest either of the "large purchase" retailer who sells at minimum markup, for he becomes subject to purchasing from the monopolistic beer wholesaler.

In turn, the consumer market, under the absence of brand purchasing competition, inevitably rises.

Concentration of brands or reduced consumer choice follows. Wholesale beer distributors are overwhelmingly multi-brand distributors. It is a marketing impossibility for a multi-brand wholesaler to sell all authorized brands of beer to all licensees authorized to sell beer at retail who are located in the franchisee's sales territory. Many imported, speciality and/or marginal brands would be forced out of the New York State malt beverage market, adding to concentration of market and domination of the New York beer market by those brands the "franchisee" seeks to aggressively market. A 100% distribution rate for 267 brands by 180 wholesalers selling 44,309 licensed accounts is delusive.

The bill grants the right to the beer wholesaler to sell his business to anyone willing to pay the price sought by the "franchisee". A "franchisee" could sell to anyone lacking financial and industry knowledge, or business and management ability. Conversely, two new state brewing operations, investing approximately one-half of a billion dollars in New York State would have to accept as a wholesaler anyone, or be forced to buy the franchise for its "fair market value".

The bill requires that the brewer must provide the wholesaler with at least 90 days prior written notice of an intent to terminate. In this three month time, a disgruntled wholesaler could impair or destroy a brand's image, reputation, availability and future prospects.

The brewer members of the United States Brewers Association, Inc., want and seek stability in their distributor relationships. Individually, they provide their respective wholesalers equity or franchise agreements. Contracts are voluntary, mutually undertaken and for nearly two centuries, brewers and wholesalers have both profited. No justifiable cause can now be served by the State choosing sides and injecting itself into mutually agreed upon business transactions.

In summary, the bill states its intent is to assure a constant supply of fresh and wholesome beer to the consumer. The efficient, well managed beer wholesaler now performs in this manner.

Yet, this concern in the market place, is an internal brewer/beer wholesaler industry problem. It can be effectively dealt with, without passage of S. 7524-A, A. 11352-A.

The United States Brewers Association, Inc., offers its assistance to the New York State Beer Wholesale industry, and to those who govern the beer industry, toward responsible and equitable action to solve the problems relating to overage merchandise.

U. S. B. A. strongly urges the defeat of S 7524-A; A 11352-A, yet its introduction has served a useful purpose in that it has informed the legislature of brewer/wholesaler relationships and brought to light inter-industry concerns. In correcting these concerns, the industry can unite and work in harmony toward solutions.

N. Y. S. Beer Wholesalers and the N. Y. S. staff of the United States Brewers Association, Inc., have always worked together and in harmony. There exists a mutual trust and respect. The Regional Vice President, United States Brewers Association, Albany, places himself at the disposal of the wholesaler and brewer, and offers to act as an intermediary on behalf of those seeking assistance to affect improved and equitable relations.

State of New York
Department of Law

Robert Abrams
Attorney General

Lloyd Constantine
Assistant Attorney General in Charge
Antitrust Bureau

Two World Trade Center
New York, NY 10047

(212) 488-7404

May 30, 1985

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: S. 412, "Malt Beverage Interbrand Competition Act"

Dear Senator Thurmond:

I am responding to your letter of May 17, 1985 and the written questions posed therein, which are a follow-up to my appearance before the Committee on May 14, 1985. I will restate the questions posed and then respond.

Question:

1. Does the State of New York or the National Association of Attorneys General have any evidence on the effect of exclusive territories on the wholesale and retail prices of beer?

Answer:

Yes. New York State is perhaps unique among the states in its experience with exclusive beer distribution territories and its ability to accurately assess their effect on price.

A New York beer wholesaler's license permits the licensee to buy or sell beer anywhere in New York State. Exclusive territories are neither mandated nor specificially barred, except as they may run afoul of the State's antitrust law, which generally conforms to the Sherman Act. New York's legislature has defeated a bill which would mandate exclusive territories eight times over the last fifteen years.

Before January 1983 New York had an open beer market, with several hundred wholesalers competing statewide. Neither Anheuser-Busch nor Miller Brewing, the dominant brands in New York, employed exclusive territories. In fact, they had vigorously opposed legislation which would have mandated exclusive territories, as discussed in my previous written testimony and the exhibits thereto. Prior to 1983, all beer wholesalers had a statewide market and, indeed, there was extensive lawful transshipment, characteristically but not exclusively from upstate wholesalers into the New York City metropolitan area.

In January 1983 Busch adopted exclusive territories by contract with its franchised distributors. In the spring of 1983 Miller followed suit.

In price surveys conducted by the New York City Department of Consumer Affairs since the institution of exclusive beer distribution territories (i.e. last week of December 1982 through April 1985) retail beer prices have risen 35.7%, whereas soft drink prices have risen 6.7%. The beer brands surveyed by Consumer Affairs were Budweiser, a product of Anheuser-Busch, and Miller High Life, a product of the Miller Brewing Company. The beer industry sought to ascribe this drastic price increase to a returnable container deposit law which also went into effect in 1983. However, this law had equal application to and effect on soft drink prices, since the law also applied to all soft drink containers. The logical conclusion drawn by this office from these startling figures is that the grossly disproportionate 35.7% beer price increase in a 28 month period was due in large part to the effects of the exclusive territories adopted by Busch and Miller in 1983. Copies of the certified price surveys of the New York City Department of Consumer Affairs were annexed to my previous written testimony and are again annexed hereto.

During my oral testimony, Senator DeConcini asked me how this 35.7% price increase compared to the national rate of inflation. Although I did not have the figures at that time, I have now obtained the relevant figures from the Bureau of Labor Statistics. During the same period of time, i.e. January 1983 through April 1985, the National Consumer Price Index ("CPI") rose 10.7%, the New York City Metropolitan regional CPI rose 13.1%, the national CPI for food rose 8.4% and the regional food CPI rose 9.7%.

Based upon these disturbing figures and other information, Attorney General Abrams has commenced a formal antitrust investigation of exclusive territories in the beer industry.

Question 2: In your view, do the state laws mandating exclusive territories for the distribution of beer confer immunity from federal antitrust laws, and, if so, does this bill contribute anything to antitrust defenses with respect to exclusive territories in those states?

Answer:

State laws mandating exclusive territories confer immunity from existing federal antitrust laws. This bill would contribute nothing to antitrust defenses in those states which mandate exclusive territories and, indeed, might weaken them.

Under the doctrine of state action sovereign immunity first announced by the Supreme Court in Parker v. Brown 317 U.S. 341 (1943) and most recently expansively interpreted in Southern Motor Carriers Rate Conference v. United States ____ Sup. Ct. ____ (March 27, 1985) it is absolutely clear that state laws mandating exclusive territories completely immunize such arrangements from current federal antitrust law. This is especially so in the alcoholic beverage area which is entrusted to state control under the twenty-first amendment and is subject to pervasive regulation and control in every state.

S. 412 would not add anything to the complete immunity afforded exclusive territories in states which mandate them. However, under some interpretations, S. 412 might in fact subject these restraints to suit when they might otherwise be immune.

A recent decision of the Bexar County (pronounced "Bear") District Court in Texas, held that the Soft Drink Interbrand Competition Act (upon which S. 412 is modeled) pre-empted the Texas Antitrust Law and prohibited the Texas Attorney General from seeking to block a merger of the Texas Coca-Cola and Dr. Pepper bottlers. Under the reasoning of that Court, the fact that Congress had specific legislation governing competition in the soft-drink industry pre-empted state laws. The same reasoning (which I believe is seriously flawed) could be applied to hold state laws mandating exclusive territories to be pre-empted by S. 412, at least to the extent of permitting an antitrust suit when there is no effective interbrand competition, whereas under the current law, immunity is complete regardless of whether or not there is effective interbrand competition. I will try to obtain a copy of the Bexar County decision and will forward it to the Committee as soon as I am successful.

Thank you for granting me the honor of testifying before the Judiciary Committee and for permitting me to answer these supplementary questions.

Very truly yours,

LLOYD CONSTANTINE
Assistant Attorney General

LC:ma
Attach.

cc: Ken Starling, Esq.
Counsel to the Judiciary Committee
United States Senate
Washington, D.C. 20510

The City of New York

DEPARTMENT OF CONSUMER AFFAIRS
80 LAFAYETTE STREET, NEW YORK, NEW YORK 10013
Telephone: 566- 0889

Simon P. Gourdine, *Commissioner*

November 18, 1983

Mr. Richard Weinberg
Assistant Attorney General
Two World Trade Center
Room 4579
New York, New York 10047

Dear Mr. Richard:

Confirming our telephone conversation, enclosed are the certified average Market Basket soda and beer figures for the years 1982 and 1983. The Department surveys Coca Cola and Budweiser or Miller.

Sincerely,

Connie Quigley

Connie Quigley
Researcher

CQ:jt
Enclosure

APPENDIX A

SODA AND BEER PRICES

Market Basket Week	Dates	Soda 1983	1982	Beer 1983	1982
425	12/20 - 12/31	$2.12	$2.29	$2.81	$2.66
426	01/03 - 01/14	2.28	2.23	2.79	2.62
427	01/17 - 01/28	2.27	2.26	2.83	2.74
428	01/31 - 02/11	2.29	2.26	2.80	2.73
429	02/14 - 02/25	2.31	2.24	2.83	2.75
430	02/28 - 03/11	2.32	2.28	2.81	2.75
431	03/14 - 03/25	2.24	2.26	2.81	2.76
432	03/28 - 04/08	2.28	2.26	2.78	2.77
433	04/11 - 04/22	2.28	2.21	2.76	2.81
434	04/25 - 05/06	2.25	2.14	2.84	2.67
435	05/09 - 05/20	2.27	2.21	2.84	2.63
436	05/23 - 06/03	2.19	2.16	2.82	2.58
437	06/06 - 06/17	2.05	2.19	2.85	2.58
438	06/20 - 07/01	2.05	2.13	2.79	2.56
439	07/05 - 07/15	2.05	2.15	2.79	2.73
440	07/18 - 07/29	2.08	2.17	2.56	2.77
441	08/01 - 08/12	2.05	2.13	2.85	2.79
442	08/15 - 08/26	2.13	2.15	2.81	2.79
443	08/29 - 09/09	2.12	2.17	2.86	2.80
444	09/12 - 09/23	2.30	2.16	3.37	2.82
445	09/30 - 10/07	2.28	2.12	3.31	2.82
446	10/11 - 10/21	2.20	2.16	3.45	2.78
447	10/24 - 11/04	2.21	2.17	3.50	2.79

The City of New York

DEPARTMENT OF CONSUMER AFFAIRS
80 LAFAYETTE STREET, NEW YORK, NEW YORK 10013
Telephone 566- 0888

Angelo J. Aponte, *Commissioner*

MEMORANDUM

TO: Richard Weinberg

FROM: Barbara Hummel

DATE: May 8, 1985

SUBJECT: Beer and Soda Prices

Enclosed are the certified average market basket soda and beer prices for weeks 448 through 476. The Department records prices for Coca-cola and Budweiser or Miller.

Please call me if you have any questions regarding these figures.

New York City Department of Consumer Affairs' Market Basket

Soda and Beer Prices

1983 Prices

Market Basket Week	Dates	Soda	Beer
448	11/07-11/18	$2.24	$3.51
449	11/21-12/02	2.32	3.49
450	12/05-12/16	2.18	3.55
451	12/19-12/30	2.22	3.53

1984 Prices

Market Basket Week	Dates	Soda	Beer
452	01/03-01/13	$2.29	$3.42
453	01/16-01/27	2.26	3.51
454	01/30-02/10	2.19	3.42
455	02/14-02/24	2.17	3.46
456	02/27-03/09	2.24	3.49
457	03/12-03/23	2.24	3.26
458&459	03/26-04/20	2.23	3.39
460&461	04/23-05/18	2.27	3.41
462&463	05/21-06/15	2.20	3.44
464&465	06/18-07/13	2.20	3.44
466&467	07/16-08/10	2.13	3.47
468	08/13-09/07	2.17	3.39
469	09/10-10/05	2.34	3.52
470	10/08-11/02	2.35	3.56
471	11/05-11/30	2.39	2.54
472	12/03-12/28	2.30	3.49

1985 Prices

Market Basket Week	Dates	Soda	Beer
473	12/31-01/25	$2.38	$3.55
474	01/28-02/22	2.45	3.60
475	02/25-03/22	2.36	3.57
476	03/25-04/26	2.44	3.61

Senator DeConcini. Our next witness is Mr. Richard Whiting, chairman of the antitrust section of the American Bar Association.

Mr. Whiting, thank you for being here. We appreciate your time and understanding of our time restraints. We will insure, without objection, that your full statement will appear in the record and you may summarize for 5 minutes, please, sir.

STATEMENT OF RICHARD A. WHITING, CHAIRMAN, SECTION ON ANTITRUST LAW, AMERICAN BAR ASSOCIATION, WASHINGTON, DC

Mr. Whiting. Thank you, Senator DeConcini.

Senator DeConcini and members of the committee, my name is Richard A. Whiting. I am chairman of the section of antitrust law of the American Bar Association and I appear before you today as the representative of John Sheperd, president of the ABA, to express the association's views on S. 412.

The ABA's board of governors adopted a resolution in opposition to this legislation on April 24 of this year. The views of the ABA, developed by the section of antitrust law, are set forth in the report and resolution that are attached to my prepared statement, and if I may I would like just to summarize their main points.

First off, the proposed Malt Beverage Interbrand Competition Act, in our judgment, is the classic example of legislation that gives special treatment under the antitrust laws to a particular industry.

It is probably not an exaggeration to say that the legislation is designed to confer virtual per se legality on exclusive territorial arrangements in the malt beverage distribution industry, since arguably so long as there is even one competitor out there, there will be effective and substantial competition.

At a minimum, the standard of the bill would apply to exclusive territorial arrangements in that industry would be different from that which the Federal antitrust laws apply in almost all other industries.

The bill's proposed prerequisite to legalizing a restrictive territorial practice—namely, that there be effective and substantial interbrand competition—uses language that is different from that used by the Supreme Court in *GTE-Sylvania*, which applies the rule of reason to all vertical nonprice restraints, including exclusive territorial arrangements.

No one knows what the new standard means. And it must be a new standard; otherwise, the bill is totally redundant and unnecessary. Far from clarifying existing law, as the proponents claim it would, the bill's language is certain to engender confusion.

However, the potential for confusion is not the sole reason that we oppose the bill. As detailed in our report, the ABA and its antitrust section have consistently over the years taken a position opposing special antitrust treatment for particular industries.

As this committee so well knows, the antitrust laws were created by Congress nearly a century ago to embody a fundamental national policy of free market competition, and we agree with the 1979 report of the President's commission that exemptions from the antitrust laws should be granted only, and I quote, "where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose."

Simply put, along with the Justice Department, the Federal Trade Commission, and the State attorneys general, we do not believe that any compelling evidence or clearly paramount social purpose has been or indeed could be shown to justify exempting this particular industry from the antitrust laws.

If there really is need for clarification in the law applicable to nonprice vertical restraints, or if there really is a need to protect industries from frivolous complaints, Congress should provide clarification and protection for all industries. Otherwise, legitimization of exclusive territorial arrangements in the malt beverage industry will be taken as meaning that such arrangements are not legitimate or are at least more suspect in other industries.

The fact is, however, that clarification of existing law is unnecessary. Courts have had little difficulty in applying the rule of reason to nonprice vertical restraints. Numerous decisions since *GTE-Sylvania* have recognized the economic and competitive benefits that exclusive territories generally provide.

The present administration has not only eschewed simplistic attacks on procompetitive exclusive territorial arrangements, but has made great efforts at providing guidance to the courts and the public in this regard, and I refer, of course, to the newly issued vertical restraint guidelines.

Just a couple of months ago, in Tom's Foods, Inc., for example, the Justice Department issued a business review letter to a snack food distributor approving the use of exclusive territories where they did not endanger competition.

Brewers can and do enter exclusive territorial arrangements, apparently undeterred by the threat of public or private litigation. Indeed, we are not aware of any case since *GTE-Sylvania* in which the use of exclusive territories by brewers has been declared unlawful. Frankly, we are mystified that this legislation is being sought.

The fact that——

Senator DeConcini. Mr. Whiting, I am sorry. Our time is coming to an end, so you must wind up.

Mr. Whiting. All right. If this legislation is passed, Senator, other industries are going to line up for the exemption. That is just inevitable. I fervently hope that you will not encourage the continued erosion of basic antitrust standards in favor of special interest groups.

The law and its interpretation are clear. If the law were not clear, the enactment of piecemeal industry-by-industry exemption legislation is the least desirable method of clarification. Necessary changes should be made on a general basis through judicial interpretation or carefully considered congressional action.

Thank you very much.

Senator DeConcini. Thank you, Mr. Whiting. You are aware, of course, that the ABA antitrust division and board of governors opposed the soft drink bill in 1980?

Mr. Whiting. I am aware of that, yes, sir.

Senator DeConcini. Do you have any evidence or information that would lead you to conclude that it has brought about more litigation or raised consumer prices?

Mr. Whiting. Whether the enactment of the bill spawned more litigation?

Senator DeConcini. Right.

Mr. Whiting. I do not have any indication on that. My impression, Senator, is that complaints attacking exclusive territorial arrangements in both industries have, since *GTE-Sylvania*, dropped way off. I do not have the statistics, but it is my clear impression.

Senator DeConcini. As a result of granting this legislation applicable to the soft drink industry, you know of no problems that have arisen as a result of that legislation?

Mr. Whiting. I think the problems that have arisen are what bring us here today. This industry comes wanting a special exemption. Next week, it will be somebody else; the week after, somebody else. And before we are through, we will have something like an Internal Revenue Code applying to the antitrust laws.

Senator DeConcini. You know of no litigation side effects as a result of passing the soft drink exemption?

Mr. Whiting. I am aware of no side effects and no effect on prices other than what I have heard this morning.

Senator DeConcini. Does the ABA support a general clarification of the law applicable to nonprice vertical restraints?

Mr. Whiting. We do not think that is necessary, Senator, but we think that would certainly be preferable, and we see no reason why the language employed in this bill could not be made applicable to any industry.

Senator DeConcini. Do you support the guidelines of the Justice Department, or have you had a chance to look at them?

Mr. Whiting. I have studied them several times. I am still trying to figure out entirely what they mean. From the standpoint of counseling clients, I have some problems with them. From the standpoint of the economic basis from which they take off, I think they are sound.

In terms of their practical utility to somebody guiding operations in the field, the jury is still out, or at least this jury is out.

Senator DeConcini. Mr. Whiting, thank you very much. We appreciate the Bar Association coming. I have questions from the chairman of the committee, Mr. Thurmond, that I will submit. We always appreciate the Bar's willingness to participate in these hearings.

The Senator from Alabama.

Senator Heflin. I would like to ask you, do you believe that there is any problem with Federal regulation in this area because of the 21st amendment?

Mr. Whiting. There may have been, or at least I have heard it argued that there was, Senator Heflin. I understand that because of the Supreme Court's decision in the *Rice* case that some doubt on that score has been lifted.

I am in full agreement with Mr. Winslow when he points to the recent Supreme Court decision in the State action area as supporting the point that if States adopted legislation, and many of them have, legitimizing exclusive territories, they would pass muster under the State action doctrine today.

Senator HEFLIN. That is all.

Senator DECONCINI. Thank you, Mr. Whiting, very much.

Mr. WHITING. Thank you, sir.

[Prepared statement follows:]

AMERICAN BAR ASSOCIATION

[illegible] OFFICE GROUP • [illegible] M STREET, N.W. • WASHINGTON, D.C. [illegible] • (202) 331-2200

STATEMENT OF

RICHARD A. WHITING
CHAIRMAN
SECTION OF ANTITRUST LAW

on behalf of the

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON THE JUDICIARY

of the

UNITED STATES SENATE

on the subject of

THE MALT BEVERAGE INTERBRAND COMPETITION ACT, S. 412

May 14, 1985

Mr. Chairman and members of the Committee:

My name is Richard A. Whiting. I am Chairman of the Section of Antitrust Law of the American Bar Association (ABA). I appear before you today as the representative of John C. Sheperd, President of the ABA, to express the Association's views on S. 412, the Malt Beverage Interbrand Competition Act.

The ABA's Board of Governors adopted a resolution in opposition to this legislation on April 24, 1985. Developed by the Section of Antitrust Law, the views of the ABA are set forth in the attached report and resolution on the proposed Act. I would like to summarize their main points.

On its face, the proposed Malt Beverage Interbrand Competition Act is a classic example of legislation that gives special treatment under the antitrust laws to a particular industry. It is probably not an exaggeration to say the legislation is designed to confer per se legality on exclusive territorial arrangements in the malt beverage distribution industry.

At a minimum, the standard the bill would apply to exclusive territorial arrangements in the malt beverage industry would be different than that which the federal antitrust laws apply to almost all other industries. The bill's proposed prerequisite to legalizing a restrictive territorial practice -- that there be "effective and substantial" interbrand competition -- uses language that is different from that used by the Supreme court in GTE-Sylvania, which applies the rule of reason to all vertical, non-price restraints. No one knows what the new standard means. And it must be a new standard; otherwise the bill is unnecessary. Far from clarifying existing law, as the proponents claim it would, the bill's language is certain to engender much confusion.

However, this potential for confusion is not the sole reason we oppose this bill. As detailed in our report, the ABA and its Antitrust Section have consistently taken positions opposing special antitrust treatment for particular industries. The antitrust laws were created by Congress nearly a century ago to embody a fundamental national policy of free market competition. We agree with the January 1979 Report of the President's Commission for Review of the Antitrust Laws and Procedures that exemptions from the antitrust laws should be granted only "where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose." Id. at 177.

We recognize that in some instances the application of the federal antitrust laws to the malt beverage industry, as well as to the rest of the alcoholic beverage industry, must accomodate the "state action" exemption, and particularly the rights reserved to the states under the Twenty-first amendment to the Constitution. The courts have been very careful to protect states' rights in these respects. Aside from those areas, however, we do not believe that any "compelling evidence" has been or could be shown to justify exempting the malt beverage industry from the antitrust laws.

If there really is need for clarification in the law applicable to non-price vertical restraints, or if there really is a need to protect industries from frivolous complaints, Congress should provide clarification and protection for all industries. Otherwise "legitimization" of exclusive territorial arrangements in the malt beverage industry could be taken as meaning that such arrangements are not legitimate or are at least more suspect in other industries.

The fact is, however, that clarification of applicable law is unnecessary. The courts have had little difficulty in recent years in applying the "rule of reason" to non-price vertical restraints. Numerous decisions since GTE-Sylvania have recognized the economic/competitive benefits that exclusive territories generally provide. The present Administration has not only eschewed simplistic attacks on procompetitive exclusive territorial arrangements but has also made enormous efforts at providing guidance to the courts and the public in this regard. The recent publication of the Department of Justice's Vertical Restraints Guidelines provides a valuable analytical framework for assessing the likely competitive impact of a given vertical restraint. Justice Department Business Review letters, such as one just issued to Tom's Foods, Inc., a snack food distributor, have approved the use of exclusive territories where they do not endanger competition. Brewers can and do enter into exclusive territorial arrangements, apparently undeterred by the threat of public or private litigation. We are not aware of any case since GTE-Sylvania in which the use of exclusive territories by brewers has been declared unlawful.

The fact that a brewer has a great deal of latitude under current law in structuring his distribution system does not mean that he should be given free rein. The antitrust agencies and private parties must have the option of challenging exclusive territories in any industry where they facilitate collusion or otherwise injure competition. Present law permits that flexibility. Moreover, the growing acceptance of what has variously been described as the "quick-look," "two-step" or "truncated" application of the rule of reason permits early resolution of many proceedings without the necessity for lengthy, painstaking, full-blown market analyses.

The proposed legislation would not preserve the option of challenging anticompetitive exclusive territory systems. The proponents may argue that Section 3 of their bill preserves that option. It does not. It provides only that the Act would not legalize the enforcement of exclusive territories by horizontal agreement or practices. It does not address the real concern with exclusive territories -- that if used by firms with sufficient market share (whether or not enforced by horizontal agreements), they may facilitate collusion, permit the exercise of market power, or otherwise foster anticompetitive behavior. The only effect of the bill can be to protect those systems which would not pass muster under the rule of reason.

It is not my intention today to address competitive conditions in the malt beverage industry in any detail, but I will make a couple of observations. We are all aware that there has been a decrease in the number of brewers and an increase in concentration at the national level and in many regions of the country. Moreover, it is not uncommon for distributors to hold the exclusive franchise for several brands in their territories, a practice that decreases interbrand, as well as intrabrand, competition. The conclusion is inescapable that conditions may exist in some markets that could foster collusion or otherwise inhibit competition. Suffice it to say that the proponents have not made a compelling case for an antitrust exemption for the malt beverage industry.

If this legislation is passed, other industries will be quick to line up for their exemptions. You should not encourage the continued erosion of basic antitrust standards in favor of special interest groups. The law and its current interpretation are quite clear. Even if the law were not clear, the enactment of piecemeal, industry-by-industry exemption legislation is the least desirable method of clarification. Necessary changes should be made on a general basis, through judicial interpretation or carefully considered congressional action.

I would be happy to answer any questions you may have.

RESOLUTION OF THE AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW CONCERNING THE "MALT BEVERAGE INTERBRAND COMPETITION ACT"

WHEREAS, the Malt Beverage Interbrand Competition Act provides special treatment under the antitrust laws for exclusive territorial agreements in the beer distribution industry; and

WHEREAS, present antitrust statutes, as interpreted and applied by the courts, permit the use of exclusive territorial agreements which do not unreasonably restrain competition; and

WHEREAS, passage of the proposed legislation would imply that exclusive territorial agreements in other industries are less legitimate than exclusive territorial arrangements in beer distribution; and

WHEREAS, passage of the proposed legislation would undermine the concept of generally applicable antitrust standards and invite other industries to seek similar exemptions from the antitrust laws;

BE IT RESOLVED, THEREFORE, that the Section of Antitrust Law expresses its opposition to legislation such as the Malt Beverage Competition Act that creates special antitrust treatment for specific industries.

BE IT FURTHER RESOLVED, that this resolution be distributed to any House or Senate committee that shall consider the Malt Beverage Interbrand Competition Act or similar legislation in the 99th Congress.

REPORT OF THE AMERICAN BAR ASSOCIATION
SECTION OF ANTITRUST LAW CONCERNING THE
"MALT BEVERAGE INTERBRAND COMPETITION ACT"

In the 97th and 98th Congresses, legislation entitled the "Malt Beverage Interbrand Competition Act" was introduced in both the House of Representatives and the Senate. The bill's stated purpose was "[to] clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws." The bill provides that nothing contained in any federal antitrust law shall render unlawful exclusive territorial agreements in any written contract between a wholesale distributor and any brewer, importer, trademark owner, or trademark licensee of a trademarked malt beverage, so long as the malt beverages covered by such agreements are in "substantial and effective competition with other malt beverage products within [a] defined geographic area." The bill further provides that nothing in the bill shall be construed as legalizing enforcement of exclusive territorial arrangements by means of unlawful price-fixing agreements, horizontal restraints of trade, or group boycotts.

In the 97th Congress the House and Senate Judiciary Committees held hearings on the bill but took no action. In the 98th Congress, additional hearings were held. Both the Department of Justice and the Federal Trade Commission opposed the legislation. In the last days of the 98th Congress, the Senate bill was brought before the full Senate for a vote as an amendment to an appropriations measure, where it was defeated. Sponsors of the legislation have announced that they intend to introduce the legislation again this session.

The proposed Malt Beverage Interbrand Competition Act is a classic example of legislation designed to secure special treatment under the antitrust laws for a particular industry. At best the bill is unnecessary and at worst it might be interpreted as creating a standard of per se legality for vertical territorial arrangements in the beer industry or at least a different standard of legality than that applying to almost all other industries under Section 1 of the Sherman Act.

The Antitrust Section has taken positions opposing special antitrust or trade regulation treatment for particular groups in the past. For example, in 1980 the Section submitted testimony opposing H.R. 3567 and H.R. 3573, the Soft Drink Interbrand Competition Act, on the grounds that special interest legislation should not be used to interfere with ongoing Federal Trade Commission proceedings.1/ Similarly, the Section in 1982 went on record opposing legislative restrictions on the Federal Trade Commission's antitrust authority over the professions.

The real difficulty with legislation such as the Soft Drink and Malt Beverage Acts is their creation of unwarranted exceptions to the antitrust standard applied to most other American businesses. The antitrust laws were created by Congress nearly a century ago to embody a fundamental national policy of free market competition. As the Supreme Court stated in Northern Pacific Railway v. United States, 356 U.S. 1, 4 (1958), the "Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress..." The antitrust laws have proved to be flexible and adaptable to a wide variety of factual circumstances in a great number of industries. In a recent reaffirmation of the antitrust laws' effectiveness, the January 1979 Report of the President's National Commission for the Review of Antitrust Laws and Procedures concluded that Congress' reliance upon the antitrust laws to protect and promote competition has been abundantly justified, and that exemptions from the antitrust laws should be granted only "where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose." Id. at 177. We do not believe that such "compelling evidence" has been or could be shown with respect to the malt beverage industry.

1/ Soft Drink Interbrand Competition Act: Hearings on H.R. 3567 and H.R. 3573 Before the Subcomm. On Monopolies and Commercial Law of the House Comm. on the Judiciary, 96th Cong., 1st and 2nd Sess. 401 (1980).

Congress, having created a sound and effective body of law, should exercise great restraint in interfering with the working of that law, and should place a very heavy burden of proof on proponents of special exemption legislation to show that existing procedures will involve extraordinary hardship and cause extraordinary injury to the public. Supporters of the malt beverage bill have claimed that the bill would merely clarify existing law. In fact the bill seeks to exempt a single industry from one of the basic antitrust rules which apply to virtually every other industry in the United States.

The legality of exclusive territorial arrangements is at present determined under Section 1 of the Sherman Act, 15 U.S.C. § 1, which outlaws "[e]very contract, combination...or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations...". In applying this section of the Act to territorial arrangements between suppliers and their distributors, courts use the "rule of reason" to determine whether, under all the circumstances, the particular arrangement is an unreasonable restraint of trade. *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977). In adopting this standard, the Supreme Court correctly recognized the fact that vertical restraints, while not necessarily or even typically anticompetitive, may have antitcompetitive effect and may therefore require challenge under Section 1 in certain circumstances. Brewers at present can and do enter into exclusive territorial arrangements with their wholesalers, and cases decided since *GTE Sylvania* have recognized the economic benefits that vertical territorial arrangements may provide. Since the antitrust laws currently outlaw only those arrangements that are anticompetitive, the only exclusive territorial arrangements that could be legalized by the bill are those which would be predominantly and demonstrably anticompetitive. Furthermore, so-called legislative "legitimization" of exclusive territorial arrangements in the malt beverage industry could be construed to imply, quite incorrectly, that such arrangements are less legitimate in industries not covered by this legislation.

The present Administration has repeatedly eschewed simplistic attacks on exclusive territorial arrangements where their procompetitive aspects outweigh any anticompetitive risks. The government agencies which administer the antitrust laws, however, should retain the option of challenging exclusive territories where they facilitate collusion or otherwise injure competition, whether in the beer industry or any other industry. The present legal structure would provide this flexibility, while the proposed legislation would not. Due to differences in language between Section 1 of the Sherman Act and the malt beverage bill, a court could find certain exclusive territorial arrangements lawful under the bill where it would otherwise conclude that they unreasonably restrained competition under the rule of reason. The bill provides that exclusive territorial arrangements would be deemed lawful if the product was in "substantial and effective competition" with other malt beverages within a defined geographic area.2/ If the proponents of an exclusive territorial restriction could show the existence of such competition, it appears that the bill would countenance, without further inquiry, the total elimination of intrabrand competition, an outcome not sanctioned by the Supreme Court in GTE Sylvania.

We are aware that Congress recently passed the Soft Drink Interbrand Competition Act, 15 U.S.C. §§ 3501-03, after which the malt beverage bill is modelled. The Section of Antitrust Law also opposed that legislation, and the Section strongly urges that creation of such ad hoc antitrust exemptions must be halted. Piecemeal, special-interest changes in antitrust standards of general applicability are not the most desirable way to effect changes in the law. To the extent that genuine clarification of the antitrust laws governing exclusive territories might be needed, the Section of Antitrust Law feels that such clarification should be made on a general basis through judicial interpretation of existing antitrust laws.

2/ Unfortunately the term "substantial and effective competition" is not defined in the bill, and its meaning is unclear. Unclear also is which party would have the burden of establishing the presence or lack of such competition, how it would be measured, or how much of it would be necessary to satisfy the requirements of the bill. It should be noted that this vague new standard would be likely to engender more litigation than the malt beverage legislation itself is supposedly designed to prevent.

Enactment of further special-interest antitrust legislation would cast doubt on the universal applicability of the antitrust laws to the unregulated sectors of the economy and encourage other industries to seek similar legislation. Indeed, the fact that the present legislation has been proposed is evidence of the fact that the fear expressed by many opponents of the soft drink bill was well founded: the rush to request exemptions is on. As one opponent of the malt beverage bill remarked in the Senate hearings: "Whatever may have been the merit of the claimed need for special legislative clarification in the soft drink industry, there is no evidence of confusion regarding the rule of reason as it is currently applied to territorial restraints in other industries, including the malt beverage industry. The only 'confusion' that may exist now concerns which industry will line up next for its exemption from the antitrust laws."[3] And as Senator Laxalt remarked at those hearings, "In the last couple of years, this committee has been besieged...on the part of interested groups wanting out from under antitrust."[4] Continued erosion of basic antitrust standards in favor of special interest groups will significantly undermine antitrust law and policy enforcement by both public agencies and aggrieved private parties.

In sum, the present case-by-case approach to exclusive territorial arrangements, which requires a balancing of all the effects, both pro- and anticompetitive, of a particular territorial scheme, eliminates only those arrangements which unreasonably restrict retailers' ability to deal in malt beverages. The law and its current interpretation are quite clear. Even if the law were not clear, the enactment of piecemeal, industry-by-industry exemption legislation is the least desirable method of clarification. Necessary changes should be made on a general basis through judicial interpretation or carefully considered congressional action. Thus, the enactment of the Malt Beverage Interbrand Competition Act would be a significant step towards creation of a patchwork of differing antitrust standards and would appreciably undermine the utility and general applicability of the antitrust laws.

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[3] Legal Analysis of the Malt Beverage Interbrand Competition Act, Attachment to Statement of the Food Marketing Institute in opposition to S. 1215, before the Committee on the Judiciary, U.S. Senate, June 21, 1982, at page 5.

[4] Hearings before the Committee on the Judiciary, U.S. Senate, 97th Cong. 2nd Sess., Ser. No. J-97-123, at p. 15.

Senator DECONCINI. Our next witness is the Honorable Ernest Gellhorn, dean of Case Western Reserve University in Cleveland, OH, and former dean of Arizona State University, one of my favorite schools.

Thank you, Dean, for being with us. We have the same time restraints here, 5 minutes. Your full statement will be in the record, if you would please proceed.

STATEMENT OF ERNEST GELLHORN, DEAN, CASE WESTERN RESERVE UNIVERSITY LAW SCHOOL, CLEVELAND, OH

Mr. GELLHORN. Mr. Chairman, it is a pleasure to appear before the Senate Judiciary Committee, in particular as a former constituent of the chair. I feel a little bit like David after Goliath in light of the fact that you have had four very substantial witnesses making powerful presentations against S. 412.

On the other hand, I am encouraged by the final outcome in that allegory, and hopefully the same will occur today. I am also disturbed by the fact that, frankly, the opposition to this legislation seems to me to be intellectually incoherent.

We have the Federal Trade Commission and the Justice Department saying that under S. 412 it is likely that collusion could be hidden, and that this bill would impair competition. The American Bar Association, by contrast, argues that it would make territorial restraints per se legal. And the representative from the State of New York says it will inevitably lead to a price increase. Some of those positions, it seems to me, are simply inconsistent.

More importantly, no witness has come before you to say that they have examined the record of the last 5 years of what happened under similar legislation governing the soft drink industry. Nor has any gone back to the very thorough 1979 report of the Federal Trade Commission examining the beer industry, saying that this is an intensely competitive industry despite changes in the market, suggesting that this is an industry that will remain competitive despite State controls on wholesaler entry and retail distribution, and demonstrating that this is an industry without significant brand loyalty despite heavy advertising.

Let me briefly explain this bill and why it seems to me that it makes sense. What it provides to say is that territorial limitations in beer distribution contracts are OK if they are inherently harmless. Now, how does it do that?

It does this by saying that territorial limitations are permitted if there is substantial and effective competition in that distribution of the product. Where there is competition and the court so finds, there is simply no fear of collusion. Collusion will not and cannot work if firms are competing with each other intensely.

What this bill seeks to do is to say there ought to be a simple dividing line between those situations where territorial restrictions might cause collusion; that is, might lead to consumer injury, and those which will not. Where there is competition, a verticle restraint cannot harm consumers because anybody who seeks to collude and increase price is going to lose market share to his competitors.

What this bill does, in other words, is draw a convenient dividing line as to when the antitrust laws ought to be applied. Pursuant to section 3, the bill says that it does not otherwise affect the Federal antitrust laws, nor does it affect the State laws because they are specifically exempted under section 7.

This bill, in other words, does not provide an exemption from the antitrust laws, despite the number of times that others have said to the contrary. It simply provides that if there is competition, then there is no reason to go through an antitrust trial.

But if there is no evidence of business rivalry, if the evidence is not substantial and effective that there is competition, then we ought to have an antitrust trial, and therefore the antitrust laws apply.

S. 412 provides a simple and straightforward standard, borrowed very clearly from the soft drink legislation. That law has worked so effectively that even the behemoth of the industry—I like that analogy today—has been forced for the first time in 99 years to change its formula.

Contrary to the testimony of Mr. Whiting for the ABA, adoption of S. 412 is an appropriate role for Congress in response to the confusion resulting from the Supreme Court *Sylvania* standard. If you go to ABA Antitrust Section meetings, as I do, you will hear at every meeting a speaker talking about the *Sylvania* standard and trying to spell it out for the attorneys so that they know how to apply it and be able to explain it for judges.

I have contributed to that literature more often perhaps than necessary. In particular, I have an article coming out in the Case Western Reserve Law Review this month entitled "Making Sense Out of the Rule of Reason."

Thus, it seems to me that clarification of the lawfulness of territorial clauses in beer distribution is exactly the area where Congress ought to intervene. It ought to step in and say here is another industry where we are going to try it. If it works in the soft drink industry and it works in the beer industry, we may try it on two or three other industries and then adopt generic legislation.

It is not appropriate, I would suggest, to adopt generic legislation and then find out whether it works. For these reasons and the other reasons set forth in my statement, I am happy to support the bill and respond to any questions.

Senator DECONCINI. Thank you very much, Dean Gellhorn. Let me ask you—we have heard from other witnesses that the beer industry is one of the few industries where factors exist that might lead to a lessening of competition if vertical restraint restrictions are loosened.

Do you agree with that analysis of the beer industry, and is it really any different?

Mr. GELLHORN. Well, on a superficial analysis, it is different because there are relatively few producers, there are State restrictions on entry, and there are often State controls on prices.

If one does not dig any deeper, one could then rely on the traditional structural analysis of antitrust and conclude that this is an industry where we ought to worry potentially about collusion, and therefore not allow nonprice restraints.

However, I would call your attention to a very careful study issued by the Federal Trade Commission staff in 1979, called "The Brewing Industry," authored by Charles F. Keithahn, which went beyond the superficial. (It was a study issued while Michael Pertchuk was chairman of the Commission, not known as a friend to large industry.)

That study concludes—and I am reading now from page 1—that the weight of the evidence supports the view that the industry has actually become more competitive and that, in general, its performance has been good.

If you go to page 3, it points out, contrary to the evidence from the gentleman from New York, that where territorial restraints have occurred, price has fallen even though increasing concentration is present. That is, page 3 of the report concludes, "The real price of beer has been falling over time."

Finally, the author of that report on page 130 predicts that the industry will continue to behave competitively even though concentration is higher. What this author has suggested—and, frankly, it is the reason I am willing to support this legislation—is that we have to, if we want to maintain a competitive economy, go beyond the old concepts of economics, the old concepts that structure determines everything, and look at the dynamics of what is going on in an industry.

The auto industry today has essentially three major producers in the United States, yet it is far more competitive today than it was 20 years ago when there were many more.

It is important for the law to reflect the changing dynamics of the economy.

Senator DECONCINI. Thank you. You answered my question. Also, you think this will create more competition, which I think is really very key to this problem. I am not interested in legislation that is going to limit competition. I am interested in increasing competition; what appears to work so well with the soft drink industry, ought to be applicable here.

You raised the question of generic legislation that might cover a series or a wide swath of industries and businesses, and your observation is that it is better to try it out first before we make wide exemptions; is that correct?

Mr. GELLHORN. Yes. I would frankly suggest that at this point we are probably ready for generic legislation, but I have not seen a stampede by either the Federal Trade Commission or the Justice Department to propose it.

As long as we are waiting for that kind of action, let us take procompetitive steps along the way.

Senator DECONCINI. Mr. Rule stated in his testimony:

> Because of the difference in language between the Sherman Act, section 1, and this bill, S. 412, a court might find that exclusive territorial arrangements were lawful under S. 412 even where it would conclude that they unreasonably restrain competition under the rule of reason.

Could you comment on that conclusion?

Mr. GELLHORN. I fear that the Department has not given the bill the analysis that it really deserves on that point. Under S. 412, the only kinds of territorial provisions that are going to end up being dismissed from potential antitrust litigation are those where there is substantial and effective competition present.

As I read *Sylvania*, and I believe as every other serious commentator has read *Sylvania*, it would be impossible to hold a territorial provision illegal if there was competition present because the benefits of interbrand competition from that restriction will inevitably outweigh any intrabrand loss.

The difficulty that is created by this legislation—and, Senator, you have put your finger on the tough question for antitrust experts—is that in seeking to overturn the *Arnold Shwinn* case in 1967, Justice Powell was putting together a majority on the Supreme Court and was focusing on why it is that territorial limitations can be desirable.

He was focusing, therefore, on the benefits to interbrand competition. But to maintain a majority, I think he had to concede the point that there was a loss of intrabrand—that is, competition within the same product. That introduced confusion in the law.

For one who has the happy opportunity occasionally to lecture Federal judges, the *Sylvania* case and subsequent decision give me a platform and an opportunity to explain to them what it is that it seems to me, at least, that Justice Powell meant.

The effort of this bill is really to provide the clarification that lawyers inevitably seek to provide to the courts. The issue is how do you draw a dividing line allowing territorial limitations which are likely to be safe. One answer that could be used is in the vertical restraints guideline. It looks at the structure of the industry. That is very complex and relies on market shares as a surrogate.

Or you can take the approach of S. 412 that if there is competition present we do not have to worry about what happens in the competition of a brand. That is the approach of this legislation. And that is the approach, frankly, of many cases now coming out at the district court level.

All we are really trying to do with this legislation is speed up the process, clarify it for the businessman, simplify it for the judges, and make some sense out of the law.

Senator DECONCINI. Dean Gellhorn, I have a number of questions I am going to submit to you, if you would be kind enough to answer them. One deals with improving the definition by adding perhaps something on the burden of proof.

I know the chairman has questions and I will submit those, also. I would like your response, if you could, on the transshipment issue that time will not permit me to get into today.

Let me just ask you one more question. The ABA witness testified that, "The law and its current interpretation are clear." Do you agree with that statement?

Mr. GELLHORN. I wish I could say yes because I think the Supreme Court's decision in *Sylvania* was ultimately correct and that Justice Powell crafted a brilliant opinion. But we have seen a series of cases come up from the district court to the court of appeals, pressing on the Supreme Court, seeking clarification.

We thought it might come forth last term in *Monsanto*. I think the answer is that it did not. I think the ABA testimony is not looking at the evidence from its own sessions. If you would look at each volume of the antitrust law journal published by the ABA since 1977, I think you will find in each volume at least one article seeking to explain once again what the meaning of the rule of reason is under *Sylvania*.

So I think the record is clear that the law is in great need of additional clarity.

Senator DECONCINI. Thank you, Dean Gellhorn. I am sorry our time has run out. I have a host of questions here I would like to pose to you. I will do it, and if you could reply to them, we would appreciate it.

Mr. GELLHORN. Thank you very much. It has been a real pleasure.

Senator DECONCINI. Thank you.

[Prepared statement and response to written questions follow:]

May 14, 1985

Statement of
ERNEST GELLHORN
on the
Malt Beverage Interbrand Competition Act (S. 412)

Mr. Chairman, I appreciate the opportunity of appearing before the Senate Committee on the Judiciary to testify regarding the Malt Beverage Interbrand Competition Act (S. 412). My name is Ernest Gellhorn, and I am the Dean and Galen J. Roush Professor of Law at Case Western Reserve University in Cleveland, Ohio. After several years of private practice, I was a law teacher at Duke University and the University of Virginia, and I have also been dean of the law schools at Arizona State University and the University of Washington.

My principal areas of teaching and writing have been in administrative law and antitrust law. I have written a text on Antitrust Law and Economics, published articles in both fields, and also lectured for the Federal Judicial Center in antitrust and administrative law.

For several years I have had a close interest in the developing law applicable to vertical restraints. For example, an article on the topic is currently being published by the Case Western Reserve Law Review under the title, Making Sense Out of the Rule of Reason. I have also testified before this Committee several times on antitrust issues, including the malt beverage and soft drink bills.

My testimony today supports S. 412 because I believe it fully serves the public interest.* It presents a significant opportunity for Congress to clarify the circumstances under which beer distributors may lawfully sell malt beverages through exclusive territorial licenses. As I will explain, this legislation would not exempt producers or distributors of beer from full compliance with the antitrust laws. It is not an exemption from antitrust requirements. In point of fact, the likely effect of this Act will be to simplify the administration of the antitrust laws in an important area (nonprice vertical restrictions) and thus to intensify competition among brewers and distributors--all to the benefit of consumers. Building on the five years of experience with the Soft Drink Interbrand Competition Act, 15 U.S.C. secs. 3501-03, this bill proposes that the same legal standard be applied as a threshold test for applying the antitrust laws to territorial limitations in beer distribution.

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*While this testimony is supported by the National Beer Wholesalers of America, Inc., my views were developed independently.

I. The Operation and Effect of the Malt Beverage Interbrand Competition Act

The primary substantive provision of the Malt Beverage Interbrand Competition Act is the directive in Section 2 that territorial restrictions in beer distribution agreements are not unlawful under the antitrust laws if "substantial and effective" interbrand competition exists among malt beverages.

The effect of this requirement would be to add a threshold test in antitrust cases examining distribution contracts with territorial limitations. The court would be asked to determine whether the restricted product faces substantial and effective competition with other beers in the geographic area defined by the territorial restriction. If it does, then the contract provision would not be unlawful under the antitrust laws. If the court does not find that such competition is present, the case would continue for a decision of whether the restriction substantially lessened competition, thereby constituting a restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. sec. 1.

Section 3 of the Malt Beverage Act provides that it does not immunize practices dangerous to competition from antitrust challenge. Specifically, this bill would not protect "price-fixing agreements, horizontal restraints of trade, or group boycotts" that would otherwise be unlawful. Nor does the Act interfere with any provisions of the laws of any state; they are specifically outside its scope (Section 7).

This Act, therefore, provides direction to the courts and clarifies the "rule of reason" test now applicable in evaluating the antitrust consequences of territorial restrictions in distribution agreements. Instead of lengthy "rule of reason" trials where juries are often confused about the meaning of this legal test, the initial question would be whether the market is competitive--that is, whether there is "substantial and effective" competition among beer products in the geographic market. Where such competition is present, the territorial restriction poses no substantial antitrust threat and this legislation makes the judgment that it should be held lawful. Only if there is a possibility of injury to consumers from the territorial restriction--that is, when there is little or no competition among beer products--will a trial have to be held.

As a result, trivial and frivolous law suits not meeting this initial, summary judgment step would be discouraged. The courts would be relieved of these unnecesary actions. The public interest would be served by the reduced litigation costs and the greater certainty provided beer producers and distributors.

II. The Malt Beverage Interbrand Competition Act Benefits Consumers and Is in the Public Interest

In 1977 the Supreme Court reversed a ten-year old doctrine that had made it automatically illegal for manufacturers to restrict the territories in which their distributors or dealers sold their products. It recognized that such territorial limitations were often--usually--of benefit to competition and consumers, and thus should not be per se unlawful.

That decision by the Court, Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977), held that nonprice vertical restrictions were to be evaluated under a rule of reason test.

However, the Court provided virtually no guidance to lower courts, attorneys or businesses on how the rule of reason was to be applied.

In Sylvania the Supreme Court ruled that territorial restrictions were to be considered sympathetically because they could be used to increase competition. New firms may be helped to enter markets and existing firms could be given incentives to intensify their efforts. Territorial restictions, the Court noted, can protect dealer investment in promotion and service as well as foster manufacturer efforts to assure product quality and customer safety. The Supreme Court emphasized that competition among producers of the same generic product "is the primary concern of the antitrust law." But it also said that such agreements could harm competition and therefore were not automatically legal. Where and how the line should be drawn between likely beneficial and possibly harmful practices was not spelled out. In fact, the Court did little to explain the meaning of the rule of reason test. It merely quoted from an earlier decision in Chicago Board of Trade v. United States, 246 U.S. 231 (1918) that vaguely identified some of the factors which should be considered in weighing whether a territorial limitation violated the antitrust laws.

As Dean Robert Pitofsky of Georgetown Law School noted shortly after the Sylvania decision was announced: "The technique followed here of citing a paragraph of generally framed factors from a 1918 case, with no indication of how and why any particular factor is relevant or the priority and relative weight to be accorded to each, will surely breed further confusion and litigation in this area." Pitofsky, The Sylvania Case: Antitrust Analysis of Non-Price Vertical Restrictions, 79 Columbia Law Review 1, 11 (1979).

Judge Richard Posner similarly warned that the unelaborated standard set forth in Sylvania would unduly confuse jurors and lead to unnecessary litigation: "The common practice of including in jury instructions the passsage . . . quoted from the

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Chicago Board of Trade opinion, often as the only guide to the concept of unreasonable restraint that is offered to the jury, imputes to jurors powers of comprehension that most of them lack." Posner, The Next Step in the Antitrust Treatment of Restricted Distribution: Per Se Legality, 48 University of Chicago Law Review 6, 15 (1981).

The results of cases decided under the Sylvania standard in recent years have fully justified these predictions. The courts have been flooded by a steady stream of cases, with juries often finding territorial restrictions illegal only to have their determinations overturned by the trial judge or, more commonly, by an appellate court. Despite the best efforts of the courts, the rules continue to be confused and contradictory. This uncertainty has invited further litigation. As one recent commentator notes, "Courts are simply incapable of dealing with the kind of nondescript, open-ended 'rule of reason' articulated in Sylvania." Hovenkamp, Economics and Federal Antitrust Law, 271 (1985). It is this confusion that the Justice Department cited when justifying its Vertical Restraints Guidelines issued in January 1985.

The Supreme Court has not acted to clarify its rule on nonprice (territorial) restrictions despite the opportunity provided in Monsanto Co. v. Spray-Rite Service Corp., 104 S. Ct. 1464 (1984). In that case, it accepted the jury's determination that the complaining dealer had been terminated because it cut prices. Thus, the Monsanto decision has primary relevance to the continuing illegality of resale price maintenance and of agreements to coerce others to follow a fixed price. The inherent problems creatd by the reasonableness standard applied in Sylvania continues unabated.

The Department of Justice has sought to explain the rules it will apply to all nonprice vertical restraints with the Vertical Guidelines issued this January. These Guidelines rely on a series of presumptions to filter out those cases where the restraints are likely to be harmless. In such circumstances, the territorial restrictions will be considered lawful by the government. Designed as guides for prosecutors--by outlining when the Department will consider prosecution--they rely on surrogate market share measures of competition. Whether this approach can be successful is unclear since there is mounting evidence that competitive intensity is not always related to market concentration. See, e.g., Kwoka, Does the Choice of Concentration Measure Really Matter?, 29 Journal of Industrial Economics 445 (1981); FTC Staff Report, The Brewing Industry (1979); Brozen, Concentration, Mergers and Public Policy (1982). In any case, it seems highly unlikely that courts will adopt the Guidelines as law since they speak more to prosecutorial discretion than to the elements of a rule of reason standard.

In the meantime, the litigation toll of expensive and time consuming law suits challenging nonprice vertical restraints has continued without stop. For judges and lawyers, the meaning of the rule of reason in nonprice vertical restraint cases seems to be left in a state of perpetual ambiguity. Probably the only beneficiaries are antitrust law teachers and their publishers, as the current confusion has created an opportunity for endless debate and spawned a cottage industry for narrow antitrust publications.

For businesses, the problem is more serious. They have to determine the antitrust risk of agreeing to territorial restrictions in the distribution of their products. These restrictions can create substantial efficiences and provide significant opportunities for gaining a competitive edge. Despite favorable results in the courts of appeal, the risk of a law suit are considerable. Thus, the decision to use territorial limitations may be blunted by legal uncertainty.

The greatest loss, however, is that suffered by consumers and society. The result of this caselaw confusion is that the threat of litigation may in fact dampen the vigor of competition in distribution as producers and distributors decline to adopt nonprice vertical arrangements that (the Supreme Court noted) would intensify interbrand competition.

S. 412 provides a simple and straightforward solution to this problem. It follows the decision made by Congress when it adopted the Soft Drink Interbrand Competition Act. There Congress decided that the benefits of territorial limitations clearly outweigh any costs when the restricted product faces "substantial and effective competition." In that circumstance, the threat of a manufacturer or distributor cartel and monopoly prices--policed by a territorial monopoly for each distributor--are nonexistent. No producer facing competitive substitutes can raise price above market levels without risking serious loss of market share. Thus, Congress made the decision for territorial limitations by soft drink bottlers that there is no reason to challenge the restriction where vigorous competition is present. S. 412 is identical in its provisions, except that it applies to beer distribution. It follows a settled pattern that will be readily understood and enforceable.

By adopting this legislation, Congress will be fulfilling its historic role of providing courts and the executive branch with guidance and instruction on the law. The antitrust rule of reason applied to nonprice vertical restraints in Sylvania has resulted in confusion. It is necessary and proper for Congress to clarify the meaning of the antitrust laws.

III. The Malt Beverage Interbrand Competition Act Does Not Exempt Beer Sellers from the Antitrust Laws and Is Not Special Interest Legislation

S. 412 creates neither an exception nor an exemption from the antitrust laws for the beer industry. Rather, it clarifies the application of the legal test announced by the Supreme Court in Sylvania by approving of a practical threshold filter that procompetitive territorial limitations should not be subject to harassing antitrust litigation. It would say that where substantial and effective competition exists among different brands of beer in a territory--and consumer are protected by this competition from any attempt to restrict output, raise price or reduce quality--it is permissible under the antitrust laws for beer producers to restrict the territories in which their distributors sell beer. Here such nonprice vertical restrictions are invariably designed to intensify competition among beer producers and distributors. On the other hand, where such competition is not present, traditional antitrust scrutiny will be available to challenge any vertical restraint.

S. 412 thus does not except or exempt the beer industry from the antitrust laws. It merely limits antitrust challenges of nonprice vertical restrictions to those territorial limitations that could pose a challenge to competition--and, under Sylvania these would continue to be tested under the rule of reason test. This proposed legislation applies a simple yet effective test to eliminate needless litigation. Where restrictions in the beer industry could be said to pose a threat to competition--in particular, where competition is not substantial and effective or the restriction is not limited to a territorial restriction--S. 412 would not apply and traditional antitrust rules would govern.

Just as similar legislation protecting territorial limitations in the soft drink industry did not except or exempt that industry from the antitrust laws, this legislation would maintain current competitive pressures among beer sellers. Before Congress adopted the soft drink legislation, rash claims were sometimes made that the bill would insulate the industry from competition. The increasing competitive pressures in the soft drink industry of the past five years are a full answer to such charges. Yet it appears that the number of tendentious and ill-founded antitrust claims challenging procompetitive territorial restrictions on soft drink distributors has fallen sharply. This legislation both protects the consumer and limits the burdens otherwise imposed by unnecessary litigation on the courts.

* * *

The effect of S. 412 would be specific and clear. It would remove the uncertainty generated by Sylvania and later cases that has confused both courts and businesses. It would assure the stability and continuity of the policy supporting the Supreme Court's ruling in Sylvania holding that territorial limitations which threaten consumers are subject to a rule of reason test. There is strong evidence collected by the Federal Trade Commission and others that competition in the beer industry is intense. See, e.g., FTC Staff Report, The Brewing Industry (1979). In this situation, the territorial limitations protected by S. 412 are likely to improve distribution and service to the consumer. By enacting this legislation, Congress would exercise its historic oversight function of assuring the proper interpretation of the law. The public would benefit from increased rivalry and consumers would be better served by this competition for their purchases.

Supplemental Statement

by

Dean Ernest Gellhorn

This statement is prepared in response to two questions by Senator Strom Thurmond, chairman of the Senate Judiciary Committee.

Question 1. "Under the rule of reason, exclusive territories are regarded as lawful unless they have a substantial adverse effect on interbrand competition. Does the bill before us establish a different standard?"

S. 412, the Malt Interbrand Competition Act, does not alter the rule of reason standard applied to test the lawfulness of exclusive territories under the standard established in Continental T.V. Inc. v. GTE Sylvania, Inc. It would establish that where vigorous interbrand competition already exists and exclusive territories pose no threat to competition, it is unnecessary to hold an antitrust trial. This is the result reached under a proper reading of Sylvania. Indeed, it is in fact the decision ultimately reached by virtually every appellate court. By providing a standard threshold test for antitrust challenges to exclusive territories, S. 412 separates out only those territorial cases that do not threaten competition and relieves the courts of burdensome but insubstantial cases and the industry of wasteful but costly litigation. Where such interbrand competition does not exist, the antitrust test of Sylvania would apply unchanged.

Question 2. "In antitrust suits against exclusive territories in the states that have laws mandating exclusive territories for beer distribution, would not the state-action immunity defense be available to defendants? If so, why do beer distributors in those states beenfit from the bill before us?"

I believe that the state-action immunity would probably be available to defendants whose exclusive territorial clauses were challenged in states having laws requiring such restrictions. That would depend on the particular state statute, i.e., whether it was a sufficient directive and also whether it constituted a state regulatory scheme within the scope of the Parker v. Brown exception to the antitrust laws. In addition, section 7 of S. 412 specifies that it would not alter the effect of any state law. Nonetheless, S. 412 benefits beer distributors in states currently having such laws by eliminating the threat of wasteful antitrust litigation if the state law were to change (a not uncommon occurence). By allowing beer producers to follow national distribution patterns, S. 412 will allow producers to lower their costs and thus allow some distributors greater margins.

May 29, 1985

Senator **DeConcini**. Next is a panel of witnesses from the Food Marketing Institute: James Boylston, Charles McDonald, Christy Spoa, and Lee Markwell. Senator Mitch McConnell was going to be here to introduce Mr. Markwell.

Are you Mr. Markwell?

Mr. **Markwell**. Yes.

Senator **DeConcini**. He is at the Agriculture Committee today doing a markup on the farm bill and regrets that he cannot be here.

We welcome you here. We are short of time, as you can see from how quickly we are proceeding with these hearings. Since we have witnesses to follow you, I must ask that all of your statements be submitted in the record.

If one of you will take the lead and summarize the position of the Food Marketing Institute. After you testify, we will ask a few questions; I know the chairman has some questions also. Who is going to be the leader here today?

STATEMENT OF A PANEL CONSISTING OF JAMES R. BOYLSTON III, REID'S RED & WHITE, BARNWELL, SC; LEE MARKWELL, MARKWELL'S PIC PAC, LOUISVILLE, KY; CHARLES McDONALD, EXECUTIVE DIRECTOR, ALABAMA RETAIL ASSOCIATION, MONTGOMERY, AL; AND CHRISTY SPOA, SPOA'S FINE FOODS, ELLWOOD CITY, PA

Mr. **Boylston**. Thank you, Senator DeConcini. I am Reid Boylston. I own and operate a supermarket in Barnwell, SC, called Reid's Red and White. It is a single store; it is not a chain.

I would like to introduce the other members of our panel: Lee Markwell, of Louisville, KY, who operates Markwell's Pic Pac Grocery Stores; Christy Spoa, of Spoa's Fine Foods, in Ellwood City, PA; and Charles McDonald, executive director of the Alabama Retail Association.

We are here on behalf of ourselves and the Food Marketing Institute to testify against S. 412. Also here are Robert Aders, president of FMI, and Harry Sullivan, FMI's senior vice president for public affairs and general counsel.

We have submitted for the record a written statement which includes a legal analysis and an indepth information packet.

[The following were received for the record:]

STATEMENT
OF THE
FOOD MARKETING INSTITUTE
ON
S. 412
THE MALT BEVERAGE INTERBRAND COMPETITION ACT

On behalf of its members, food retailers and wholesalers, the Food Marketing Institute appreciates this opportunity to present testimony in opposition to S. 412 the Malt Beverage Interbrand Competition Act, or more accurately the Malt Beverage Monopoly Protection Act.

The Food Marketing Institute (FMI) is a non-profit association that conducts programs in research, education and public affairs on behalf of its 1500 members - food retailers and wholesalers and their customers. FMI's domestic member companies operate over 17,000 retail food stores with a combined annual sales volume of $150 billion - half of all grocery sales in the United States. More than three-fourths of FMI's membership is comprised of independent supermarket operators and small regional firms.

This is the third Congress being asked to endorse monopolies for beer wholesalers and the third time FMI has appeared before this Committee in opposition to this legislation. FMI remains as committed as ever in its opposition to the beer bill. The legislation is anitconsumer, anti-competitive and unnecessary. We are pleased that since we last testified the ranks of those that oppose this special interest legislation have grown to include the American Bar Association, the National Association of Retail Druggists, the Alliance for a Competitive Marketplace, the New York City Consumer Affairs Office and the Empire State Beer Distributors Association. A full listing of organizations opposed to S. 412 is provided at the end of this statement. In addition, many state and local grocery and retail organizations join in opposition to this legislation.

The Report of the President's National Commission for the Review of Antitrust Laws and Procedures, issued in January 1979, confirmed the soundness of the antitrust laws in fostering our nation's free enterprise system.

The report concluded that exceptions to present antitrust policy should be made only if "there exists compelling evidence of the unworkability of competition or a clearly paramount social purpose." It is abundantly clear that the hearing record to date shows the proponents of the beer bill have not come close to providing "compelling evidence" or showing a "paramount social purpose." Indeed, the hearing record shows just the opposite.

In effect, S. 412 endorses monopolies for beer wholesalers. By it's own terms it carves out a special antitrust rule for the beer industry. If enacted, this legislation would allow a brewer of a particular brand of beer, without concern of the antitrust laws, to enter into an agreement with a wholesaler giving that wholesaler the exclusive right to sell that brand in the territory. Under these arrangements, retailers in the territory have to buy that brand only from the designated wholesaler. As a result, retailers and their customers are placed at the mercy of the designated monopolist.

We believe it would be especially inappropriate for the Congress to enact this protective, special interest legislation now when the virtue of free competition is being revived in other sectors of the economy. If this bill becomes law, the only winners will be the beer distributors who will no longer have to worry about competition. The losers will be America's beer drinkers, those involved in the beer distribution system and all those who believe in free competition in the marketplace.

FMI vigorously opposes the Malt Beverage Interbrand Competition Act because it would raise prices and decrease service, and create a bad antitrust precedent. The legislation is unnecessary because the beer industry does not face the legal challenges faced by the soft drink industry, and already enjoys significant competitive advantages under state laws. The beer bill would also interfere with the states' authority to exercise their Twenty-First Amendment rights.

Our gravest concerns about this legislation center around its effect on prices and its effect as a precedent.

Monopolies Mean Higher Prices

As much as proponents would like to have everyone believe the opposite, the plain economic fact is that reduced competition means higher prices.

The Committee's record contains much testimony indicating the price of beer declined in Indiana as a result of competition between wholesalers. Just this year Indiana's beer wholesalers attempted to repeal the state's prohibition of exclusive territories. Retailers and free market 5wholesalers said if exclusive territories are repealed the price of a case of beer will go up anywhere from $2.00 to $4.00. "No way will it come close to a $4.00 increase," said a beer wholesaler in favor of repeal, "it will be more like a $1.00 or $1.50 increase from the brewery." Proponents of exclusive territories, therefore, acknowledge that their monopoly distribution rights mean higher prices to the retailer and to the consumer. The Indiana legislature responded to the concerns of retailers and consumers and the beer barons failed to overturn the state's prohibition.

From New York and New Jersey as well there is solid price data in the Committee's record from the 98th Congress showing that exclusive territories increase beer prices by as much as 26 percent. In sum, while there may be some dispute over how much prices increase when wholesalers get monopoly territories, there is no doubt that they do increase.

The Beer Bill Would Be A Bad Precedent

There is no question but that Congress will be faced with similar pleas for antitrust immunity from other industries if it gives in to the beer bill. The Justice Department and others are warning about this eventuality. Indeed the wine wholesalers indicated in a letter to the Committee in the 97th Congress that it would like to see exclusive territorial protection extended to all industries. The wine wholesalers have sought exclusive territory legislation in Oregon in the past. In Rhode Island they are presently working with the distilled spirits wholesalers to win distribution monopoly rights. This "domino" threat is real. Since beer is essentially the same as any product in the grocery store, it would be hard not to extend similar treatment to other food and grocery products.

This is of special concern to the food distribution industry because retailers presently can "shop" among wholesalers for the best price and service on the vast majority of items in their stores - the average supermarket carries 15,000 items. This ability enables retailers to be competitive with each other by offering the best possible prices to consumers. If this ability to shop in the wholesale market is eroded by more and more industries receiving government-sanctioned comfort of exclusive territories, then competitive retailing and consumer welfare will suffer. The winners will be the beer wholesalers with inflated, guaranteed profits. While exclusive territories create orderly markets, Mike DeFabis, a supermarket operator in Indianapolis, has said in this instance "orderly markets is synonymous with gouge the public."

The Beer Bill Is Unnecessary

Proponents claim that S. 412 is necessary because exclusive territorial arrangements for beer are being threatened. However, the hearing record is replete with confirmation of the fact that pro-competitive exclusive territories are already legal. The beer bill is unnecessary. What possible effect would passage of the beer bill have other than send a signal that non-competitive exclusive territories are now sanctioned?

Additionally, the beer bill is unnecessary to protect beer wholesalers because they already enjoy unique competitive advantages under state laws. Licensing and other requirements reduce entry and significantly reduce competition. Most importantly, each state has a three-tier distribution system for beer that, unlike other products, prevents brewers (the manufacturers) and retailers from dealing directly. In other words, the wholesalers of other products face competition from their own suppliers, the manufacturers, while beer wholesalers are guaranteed a position as the middleman. The three-tier system protects the beer wholesaler from all vertical competition. Now with the beer bill they want to be free of horizontal competition.

Proponents claim the beer bill is needed to avoid the burden of costly and frivolous lawsuits. Just how much litigation has the beer industry been subjected to? The answer is very little - further demonstrating the legislation is unnecessary. In 1977 the Supreme Court's GTE Sylvania decision overturned its 1967 Schwinn decision which held that exclusive territories were *per se* illegal. The GTE Sylvania decision ruled that exclusive territories are legal as long as their pro-competitive effects outweighed their anti-competitive effects.

From 1973 to 1977 there were only four reported decisions involving beer exclusive territories. Three of the challenges to exclusive territories were successful based on the Schwinn decision. Since GTE Sylvania reversed Schwinn in 1977, there have been only five reported decisions and, most importantly, not one has successfully challenged beer exclusive territories. Therefore, not only is there very little litigation, but there has been no uncertainty in applying the GTE Sylvania ruling.

Attached to this statement is a legal analysis which describes this litigation in greater detail. The analysis also shows the fallacy of the proponents' claim that S. 412 is needed to clarify the states' authority under the Twenty-first Amendment to regulate beer distribution. There have been no cases of a state law regarding exclusive territories being successfully attacked. Ironically, one of the few serious challenges was brought by the beer wholesalers themselves in their attempt to undo Indiana's prohibition of exclusive territories. Predictably, the court said Indiana's right to prohibit exclusive territories is clear under the Twenty-first Amendment, and "This court should and will exercise the greatest restraint in passing judgment on highly volatile social, economic and political issues that should properly be decided by the Indiana General Assembly."

The Beer Bill Infringes On States' Rights

The Twenty-First amendment, which repealed prohibition, left to the states the right to regulate the distribution of alcoholic beverages within their borders. The states do have wide latitude in the area of liquor distribution and they have exercised their authority in this area by establishing a wide variety of laws and regulations concerning the distribution and pricing of alcoholic beverages.

S. 412 introduces the federal government into this area of state regulation by endorsing a particular system of beer distribution. S. 412 will in a subtle but significant way intrude into the states regulation of beer distribution. Today, the question of whether or not exclusive territories should be permitted or required at the local level is determined by the state legislatures or state alcoholic beverage control commissions. Twenty-six states require exclusive territories for beer wholesalers, twenty-three are either silent or neutral on the subject. One, Indiana, prohibits exclusive territories.

In recent years Alabama, Texas, South Carolina and Virginia have changed their laws to require exclusive territories. During the same period Indiana has repeatedly affirmed its prohibition of exclusive territories by defeating attempts in the Indiana Legislature to have the prohibition lifted. The California legislature is presently considering legislation to require exclusive territories for beer wholesalers. It is clear, therefore, that the states are perfectly capable of acting in their own perceived interest through the exercise of their Twenty-first Amendment powers. As much as the beer bill's proponents would like it, the states do not need the Congress stepping in and providing a blanket sanction for beer exclusive territories and an exemption from the antitrust statutes that other businesses have to abide by.

Proponents of this bill are not defenders of states' rights. They want to insure the use of exclusive territories whether or not there is a state position on the question of exclusive territories. Because enactment of S. 412 will immunize these arrangements under the antitrust laws, exclusive territories undoubtedly will become the rule unless a state specifically prohibits them. Thus, this legislation will result in exclusive territories becoming the rule if a state does nothing one way or the other on this question. This will directly affect those 23 states whose laws are either silent or neutral on exclusive territories for the distribution of beer.

Quite clearly, it is not the application of the antitrust laws to beer distribution that intrudes on states' rights under the Twenty-First Amendment and creates confusion; rather, it is the attempt by the beer industry to get the federal government involved in an area traditionally left to the states that does so. If S. 412 becomes law, the federal government will be sending a clear message to the states, to the industry and to consumers. The result will be exclusive territories uniformly across the nation to the consumer's detriment, whether or not the state has approved, required or enforced that distribution system.

The Beer Bill is "Me Too" Legislation

Another major justification cited by proponents of the beer bill is that they are merely requesting the same protection given the soft drink industry in 1980 with the passage of the Soft Drink Interbrand Competition Act. The argument boils down to "if the soft drink industry received an exemption from the antitrust laws, why can't we?" There are, however, important differences between the two industries, their distribution systems and their legal situations. Whatever one thinks of the merits of the exemption for the soft drink industry, it is important to understand these differences.

Exclusive territorial franchises have been the standard, uniform nationwide practice in the soft drink industry for some 80 years. That uniform, nationwide system was directly threatened by the Federal Trade Commission when it began proceedings against the soft drink industry's exclusive territorial system in 1971, and again when that agency issued a final decision in 1978 concluding specifically that exclusive franchises, as they exist in the soft drink industry, were anti-competitive and in violation of our antitrust laws. If that decision had been upheld by the federal courts, the soft drink industry would have had to change its distribution system. Before that could happen, Congress intervened and passed the Soft Drink Interbrand Competition Act which averted this imminent threat to the established distribution system in the soft drink industry.

The legislative history of the soft drink bill makes it quite clear that the legislation was premised on the very special situation facing the soft drink industry and in no way should be considered as a precedent for other industries seeking exemption from the antitrust laws.

The House Report on the Soft Drink Interbrand Competition Act mentions just one reason, under Section I. Purpose, for enacting the legislation. "[T]he bill addresses issues central to a still unresolved antitrust proceeding brought by the Federal Trade Commission in 1971....The clarification eliminates uncertainty in the law that has plagued the industry, particularly smaller bottlers, during the last decade." The House Report's legislative history concludes with the following: "The Committee intends that H.R. 3567 provide necessary relief without granting antitrust immunity and without establishing any precedent that would weaken our beleaguered antitrust laws."

The proponents of S. 412 are trying to use the soft drink bill as just such a precedent. They are attempting to use the exact same arguments of disruption and uncertainty which the soft drink industry did indeed face. The fact is, the beer industry faces no legal challenges like the threat the soft drink industry faced.

Not only are its legal circumstances different, the malt beverage industry is functionally very different from the soft drink industry. In the soft drink industry, the syrup manufacturers sell the syrup to the bottlers who add carbonated water and then bottle the product. The bottlers in turn sell the product to the retailers. This means that, unlike beer distributors, the soft drink bottlers are not simply middlemen or wholesalers. They perform a processing, bottling and manufacturing function. Beer distributors are not brewers. Accordingly, they do not have any of the processing, bottling and manufacturing requirements of a soft drink bottler.

Beer wholesalers do not have large capital needs relative to other industries or even to other wholesalers. For example, the general food wholesalers and self-wholesaling retailers, who warehouse and distribute thousands of different products to hundreds of different retail outlets, face a much more demanding situation in terms of their physical plant, distribution equipment and capital needs. These substantial capital investments are made quite willingly even though the wholesalers are not guaranteed a monopoly in their marketing area. It is unrealistic, therefore, to argue that beer wholesalers need such a guarantee.

It is interesting to examine what has happened in the soft drink industry since the passage of the Soft Drink Interbrand Competition Act in 1980. The soft drink bill was purported to be necessary, among other things, to stem the decline in the number of bottlers - particularly small bottlers. The numbers are revealing. There were over 6,000 bottling plants in 1950. This number declined to 2,317 in 1975 and then 1,841 by 1980 - the year the soft drink bill became law. Today there are 1,475 bottlers. The bill did not stop a decline in the number of bottlers, nor even slow it down. In addition, the bigger ones are getting bigger. In 1972 the largest 50 bottling firms had 45 percent of national soft drink sales. Today, the ten largest bottlers have 24 percent of the market.

The soft drink industry is undergoing significant changes. According to the Department of Commerce 1985 U.S. Industrial Outlook, "More than half of Coca-Cola's U.S. bottling business has changed hands over the last five years....The major drink franchises are expected to become more dominant and to further broaden their product lines; some smaller national and regional brands are expected to be acquired or to discontinue operation. The number of bottling operations is also forecast to continue declining as multimarket bottlers consolidate manufacturing operations and increase distribution outlets." So much for helping protect the small bottler. If anything, enacting the soft drink bill has had the effect of making bottling companies with their protected markets lucrative targets for acquisition and consolidation.

Proponents of the beer bill also say their special interest legislation will help their small wholesalers. Beer industry projections already show the handwriting on the wall. According to the Beverage Marketing Corporation, because of increasing concentration at the brewery level, the number of beer wholesalers will continue to decline by about 2.2 percent a year until 1990. The number of beer wholesalers is declining and the bigger ones are getting bigger, all because of concentration at the brewery level. Just as passage of the soft drink bill didn't help small bottlers, passage of the beer bill won't help the small beer wholesaler.

We would also like to submit for the record an information piece we have developed. It reviews several issues the Committee has already heard, such as the now-debunked notion that exclusive territories are needed to assure that only fresh beer is sold. Also more thoroughly discussed is how the beer bill would change the present legal standard by which exclusive territories are judged. It would not merely "clarify and codify" existing laws as proponents claim.

The loud chorus of opposition to this special interest legislation only demonstrates the Malt Beverage Interbrand Competition Act would restrict retailer business freedoms, hurt their customers, grant further competitive privilege to an industry that already enjoys a less competitive climate, and compromise our nation's antitrust laws.

Conclusion

In summary, the bill is not only unnecessary but affirmatively harmful:

1. The bill would decrease service and increase costs to retailers and consumers. Exclusive territories in the beer industry have been found to increase prices to consumers by approximately 20 percent. Make no mistake about it, the intent of, and the end result of this legislation is to promote exclusive territories in beer distribution.

2. The precedent created by this legislation will create considerable pressure for Congress to carve out additional exemptions from the antitrust laws for other suppliers of food and grocery products.

3. The beer industry has not been the subject of any court decision, as the soft drink industry was, in which exclusive territories were found to be illegal under the conditions of that industry. The beer industry already enjoys significant protection not afforded the soft drink or other industries. Moreover, the beer industry has experienced only a modest amount of litigation.

4. The bill would interfere with state control of trade in malt beverages.

5. No special circumstances render the additional protections of S. 412 necessary. Exclusive territorial arrangements have been sanctioned by the courts under the flexible rule of reason test applicable to all industries. Exclusive territorial arrangements in the beer industry that are necessitated by valid business reasons and which, on balance, do not adversely affect competition or facilitate collusion are already legal and need no exemption.

We sincerely hope that this Committee and the Congress will take the opportunity that this legislation provides to send the American public the message that we still do believe in free enterprise and competition. Enactment of S. 412 will send exactly the opposite message.

We thank the Committee for the opportunity to be heard on this important issue.

OPPOSITION TO THE BEER BILL

American Bar Association

Consumer Federation of America

Congress Watch

Consumers Union

National Consumers League

Community Nutrition Institute

National Association of Attorneys General

Federal Trade Commission

Department of Justice

Alliance For a Competitive Marketplace

New York City Consumer Affairs Office

Many State and Local Grocery and Retail Associations

National Association of Retail Druggists

National Small Business Association

American Retail Federation

National Licensed Beverage Association

Food Marketing Institute

National Grocers Association

National Association of Chain Drug Stores

National Association of Convenience Stores

Indiana Malt Beverage Association

National-American Wholesale Grocers' Association

Independent Beverage Distributors Alliance

Empire State Beer Distributors Alliance

LEGAL ANALYSIS OF PURPORTED JUSTIFICATIONS FOR MALT BEVERAGE INTERBRAND COMPETITION ACT

I. SUMMARY

The beer bill [1] has been reintroduced in the 99th Congress, and once again, the bill's supporters have placed statements in the Congressional Record and published "white papers" describing the bill's purpose and effect. Although the justifications for the bill have undergone some changes since the beer bill was first introduced several years ago, two themes in particular have remained constant. The first is that the legislation is necessary to protect distributors from "nuisance lawsuits" involving "extensive discovery exploring ridiculous nuances of the market." The second persistently raised justification is that the beer bill is needed to "safeguard effective state control over the distribution of alcoholic beverages in those 49 states [sic] [2] which mandate or permit exclusive territories."

Analysis of actual, litigated cases demonstrates the fallacy of both arguments. First, while the bill's supporters have continually suggested that the courts are flooded with suits challenging brewers' or distributors' establishment of exclusive territories, in truth the volume of litigation over the past ten years has been extremely modest.[3] In fact, there have been only five reported decisions involving challenges to exclusive beer marketing territories since 1977, and nearly all of them involved the same brewer. More importantly, we found no case decided after 1977, the year the Supreme Court held that non-price vertical restraints are to be judged under the rule of reason,[4] in which a system of exclusive territories in the beer industry was declared unlawful. Moreover, almost all the challenges to exclusive territories in the beer industry were initiated by distributors competitively disadvantaged by this distribution system, not by retailers or enforcement agencies. Second, recent decisions in cases where state laws or regulations concerning beer distribution were challenged are without exception characterized by extraordinary deference towards the state legislatures. State laws regulating beer distribution have been invalidated only when they required or authorized *per se* illegal conduct by private parties. Moreover, some courts have found state laws or regulatory schemes involving beer distribution to be immunized from antitrust scrutiny by the "state action" doctrine. In short, the cases demonstrate that the beer bill is not needed to confirm or clarify the states' authority to regulate beer distribution. That has already been accomplished by the courts. A discussion of these cases follows.

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[1] "Malt Beverage Interbrand Competition Act" (S.412; H.R. 1108).

[2] Forty-nine is the number repeatedly cited by the National Beer Wholesaler's Association as the number of states whose laws require or "permit" exclusive territories in beer distribution. Included in that number are 23 states whose laws are silent or neutral on the subject.

3/ In the 98th Congress, Dean Ernest Gellhorn testified that the legislation was needed to eliminate unnecessary litigation, but he failed to cite a single case involving the beer industry. In a hearing on the beer bill held by the Senate Judiciary Committee during the 97th Congress, Senator Laxalt asked the National Beer Wholesalers Association witness, Seymour Podolsky, "How much litigation has there been along these lines?" Mr. Podolsky replied: "On page 10 of the document we submitted we have listed 25 cases. The Federal courts frequently have applied and interpreted *Continental TV v. GTE-Sylvania, Inc.* The following list includes examples of such cases decided by each level of the Federal courts. The approaches taken by these courts often have not been consistent. There are 25 cases here. Plaintiffs prevailed and received a money award in the following vertical or partially vertical cases." Malt Beverage Interbrand Competition Act: *Hearings on S. 1215 Before the Senate Committee on the Judiciary*, 97th Cong., 2d Sess. 130-31 (1982). None of the cases cited in the paper referred to by Podolsky involved distribution of alcoholic beverages.

4/ Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 35 (1977).

II. CASES INVOLVING CHALLENGES TO EXCLUSIVE TERRITORIES

A. Cases Decided Before GTE Sylvania

In 1967, the Supreme Court held that "[u]nder the Sherman Act, it is unreasonable without more [i.e., per se illegal] for a manufacturer to seek to restrict and confine areas or persons with whom an article may be traded after the manufacturer has parted with dominion over it." United States v. Arnold Schwinn & Co., 388 U.S. 365, 379 (1967). Between 1967 and 1977, when Schwinn was overruled by Continental T.V. Inc. v. GTE Sylvania, Inc., 433 U.S. 35 (1977), there were a few successful challenges to exclusive territorial agreements in the beer industry. Most of the pre-GTE Sylvania cases involved the distribution system of Adolph Coors Company. Since GTE Sylvania, the volume of lawsuits resulting in published decisions has dropped dramatically and no court has invalidated such an agreement.

In 1973, the Federal Trade Commission found that Coors' distributor contract violated Section 5 of the FTC Act (15 U.S.C. § 45(a)), because it imposed territorial restrictions on resale. The Court of Appeals for the Tenth Circuit affirmed the Commission's decision, applying the per se standard enunciated in Schwinn. Adolph Coors Co. v. FTC, 497 F.2d 1178 (10th Cir. 1974), cert. denied, 419 U.S. 1105 (1975).

In Copper Liquor Co. v. Adolph Coors Co., 506 F.2d 934 (5th Cir. 1975), the Fifth Circuit upheld a jury verdict in favor of a retail liquor store owner who had been cut off by a Coors distributor. The retailer contended that a conspiracy existed between Coors and its distributors to fix retail beer prices, and that Coors had caused its distributor to terminate plaintiff for selling Coors at a discount. The retailer further alleged that Coors and its distributors created and enforced exclusive territories, which made it impossible for retailers to obtain Coors from other distributors and thus facilitated enforcement of the price-fixing conspiracy. The Fifth Circuit, being bound by Schwinn, held that Coors' enforcement of a system of exclusive territories was per se unlawful under Section 1 of the Sherman Act. Id. at 940-48. It also pointed out that "Coors' restraints were ancillary to an illegal price fixing scheme." Id. at 948.

Not all the cases involving Coors' territorial restrictions were initiated by retailers or distributors against the brewer. In 1973, Coors sued a North Carolina beer wholesaler which was buying Coors Beer from a Denver retailer, trucking it to North Carolina, and reselling it to retail accounts (transhipping). At that time, Coors' distribution agreements not only forbade transhipping between assigned territories, but also prohibited sales of its product outside an 11-state marketing area. 5/ The North Carolina wholesaler counterclaimed, charging that the territorial restraints constituted a per se violation of the Sherman Act. The district court, following Schwinn, declined to dismiss the counterclaim and dissolved a preliminary injunction granted earlier in Coors' favor. Adolph Coors Co. v. A&S Wholesalers, Inc., 1975-1 Trade Cas. (CCH) ¶ 60,187 (D. Colo. 1975), rev'd., 561 F.2d 807 (10th Cir. 1977). See also Lamp Liquors, Inc. v. Adolph Coors Co., 410 F. Supp. 536, 539 (D. Wyo. 1976) (alleged conspiracy between Coors and distributor to prevent retailer from selling Coors to east-coast wholesalers, if proven, would be per se illegal), rev'd. on other grounds, 563 F.2d 425 (10th Cir. 1977).

Finally, not all the pre-GTE Sylvania cases in which the plaintiff proved the existence of an exclusive territorial agreement resulted in recovery of monetary damages. In Kestenbaum v. Falstaff Brewing Corp., 514 F.2d 690 (5th Cir. 1975), cert. denied 424 U.S. 943 (1975), the appellate court reversed a jury verdict in favor of the plaintiff, a former distributor of Falstaff Beer. Among several Sherman Act charges, plaintiff claimed that Falstaff enforced territorial restrictions on the resale of its beer. The court of appeals held that it was error for the trial court to allow this claim to go to the jury, because plaintiff "never attempted to show the amount of monetary injury

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5/ Today Coors is distributed nationwide.

suffered because of loss of sales to retailers outside his territory -- sales that reasonably would have been made but for Falstaff's territorial restriction policy." Id. at 697.

One brewer successfully invoked "state action" immunity to defeat a distributor's claim that its exclusive territories violated the Sherman Act. V&L Cicione, Inc. v. C. Schmidt Sons, Inc., 403 F. Supp. 643 (E.D. Pa. 1975). Pennsylvania law required brewers to designate exclusive territories for their distributors. The court held that "[a]t the very least, the Pennsylvania Liquor Code must be considered 'implied permission' for Schmidt's action in making territorial assignments to wholesalers. . . . Because Schmidt's territorial restrictions were issued pursuant to the Pennsylvania Liquor Code, its actions are immune from the prohibitions of the Sherman Act." Id. at 654.

B. Cases Decided After GTE Sylvania

The trend of successful challenges to exclusive territorial agreements in the beer industry abruptly ended after the Supreme Court's decision in Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977). There, the Supreme Court overruled Schwinn and held that non-price vertical restraints were to be held unreasonable only if their anticompetitive impact is not outweighed by procompetitive justifications.

The Supreme Court's decision had an immediate impact on the A&S Wholesalers and Lamp Liquors cases, the appeals of which were pending before the Tenth Circuit. Both cases were remanded to the trial court for "a determination as to whether under all the circumstances and considering the magnitude of the restraint, it is to be regarded as unreasonable." Lamp Liquors, Inc. v. Adolph Coors Co., 563 F.2d 425, 532 (10th Cir. 1977); accord Adolph Coors Co. v. A&S Wholesalers, Inc., 561 F.2d 807, 813-14 (10th Cir. 1977) (remanding for determination whether territorial restrictions are anticompetitive and whether they are required to insure quality and integrity of the product). Both cases apparently settled thereafter, because there are no further reported decisions.

The only other reported decisions since 1977 also involved Coors. In Maykuth v. Adolph Coors Co., 690 F.2d 689 (9th Cir. 1982), the Ninth Circuit held that Coors was entitled to summary judgment as a matter of law on a distributor's claim that Coors' territorial restrictions were unreasonable restraints on trade. Plaintiff, a Coors distributor located in Montana, agreed to sell large quantities of Coors Beer to a beer broker for resale in Alabama. When Coors learned of this, it terminated plaintiff. The court of appeals disagreed with the trial court's conclusion that Coors' conduct was shielded by state action immunity. It held that plaintiff's claim must fail anyway, however, because it suffered no competitive injury. Plaintiff's complaint was that he could not sell Coors Beer in his territory for resale in Alabama. But since no Coors distributors were authorized to sell in Alabama, there had been no reduction in intraband competition. Plaintiff suffered no antitrust injury because it could point to no sale of Coors Beer in Alabama which, but for the territorial restriction, it could have made. Id. at 696.

The non-price vertical restraints imposed by Coors on its distributors were again upheld in Mendelovitz v. Adolph Coors Co., 693 F.2d 570 (5th Cir. 1982). The evidence introduced at trial showed that Coors required each of its distributors to sign an agreement containing strict quality control procedures and territorial restrictions. In addition, Coors marked every can and bottle with the distributor's name, so that any breach of the agreement's terms could be traced to the responsible distributor. The quality control procedures were quite detailed, specifying such things as the temperature to be maintained in the distributor's trucks. Coors distributors were prohibited from selling the beer outside their appointed territories, and no distributor could sell beyond a 14-state area in the western United States. The brewer's justification for this restriction was that the special properties of Coors Beer would cause it to spoil if it were transported too great a distance from the brewery in Colorado.

A wholesaler who had been terminated by Coors for selling outside the 14-state territory challenged the legality of the restraints under the Sherman Act. The court of appeals held that the plaintiff had failed to show an adverse impact on either intrabrand or interbrand competition and, further, that Coors had presented substantial evidence of the reasonableness of its quality control procedures. Id. at 576; accord, Del Rio Distributing Co. v. Adolph Coors Co., 589 F.2d 176, 179, reh. denied, 595 F.2d 1221 (5th Cir. 1979), cert. denied, 444 U.S. 840 (1979) (on appeal from jury verdict in favor of defendant Coors; held, there was ample evidence from which a jury could conclude that exclusive territories were essential to maintaining quality control and service in the retail market).

The scarcity of reported decisions [6] since 1977 undoubtedly reflects the awareness of potential plaintiffs and their attorneys that it is difficult to prevail in a rule of reason case. In fact, a strong argument can be made that GTE Sylvania and its progeny have served to discourage suits in all but the most egregiously anticompetitive situations. Moreover, the decisions in Maykuth and Mendelovitz display none of the excrutiating analysis of markets and market power which the beer bill's supporters seem to think is routine in such cases. In both cases, it was clear that the plaintiff could not prove either injury to itself or injury to competition generally. To be sure, even a weak lawsuit may subject defendants to lengthy and costly discovery, but recent changes in the Federal Rules of Civil Procedure have given the district courts substantial authority to control and limit discovery and to discipline attorneys who abuse discovery. See Fed. R. Civ. P. 16, 11. Of course, this problem is one faced by all potential defendants; it is not unique to beer wholesalers.

6/ We have only been able to survey reported decisions. Pending cases that have not yet been decided as well as unreported decisions obviously are not included. While we are aware of a few pending cases, their mere existence in no way invalidates our conclusion that there is very little litigation concerning the use of exclusive territories in the beer industry.

III. SUITS CHALLENGING STATE LAWS REGULATING BEER DISTRIBUTION

The beer bill's supporters assert that the bill is a necessary clarification or reaffirmation of the states' authority under the Twenty-first Amendment to regulate beer distribution. A well-developed line of cases, beginning with two decisions of the Supreme Court, demonstrates that no such need exists. The legal analysis applicable to state laws regulating beer distribution is clear. Moreover, though the beer bill's supporters profess concern for the 49 state laws [7/] or regulations which require or permit establishment of exclusive beer distribution territories, we found no case in which a state law concerning establishment of exclusive territories was successfully attacked. Significantly, one of the few serious challenges to such a state law was that mounted by the National Beer Wholesalers Association against an Indiana regulation forbidding establishment of exclusive territories.

A. The Line Between Permissible And Impermissible State Regulation Of Beer Distribution Has Been Clearly Drawn

In Rice v. Norman Williams Co., ___ U.S. ___, 102 S.Ct. 3294 (1982), the Supreme Court upheld a California regulation that required distilled spirits manufacturers to designate authorized California importers of their brands. The effect of this regulation was to facilitate private enforcement of territorial restrictions. In reversing a state court ruling invalidating the regulation, the Court established the following analysis for assessing alleged conflicts between federal antitrust law and state statutes:

> [A] state statute, when considered in the abstract, may be condemned under the antitrust laws only if it mandates or authorizes conduct that necessarily constitutes a violation of the antitrust laws in all cases, or if it places irresistible

---

[7/] As noted above, forty-nine is the number repeatedly cited by the National Beer Wholesaler's Association as the number of states whose laws require or "permit" exclusive territories in beer distribution. Included in that number are 23 states whose laws are silent or neutral on the subject.

> pressure on a private party to violate the antitrust laws in order to comply with the statute.

102 S.Ct. at 3300. Vertical territorial restrictions are not in all cases unlawful; they are judged under the rule of reason. Hence, the California regulation facilitating private enforcement of territorial restraints in alcoholic beverage distribution was held to be within the state's authority under the Twenty-first Amendment and not in conflict with the Sherman Act. *Id.* at 3301.

The Court distinguished the regulation at issue from a wine pricing law struck down in its earlier *Midcal* decision:

> In *California Liquor Dealers v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), we examined a statute that *required* members of the California wine industry to file fair trade contracts or price schedules with the state, and provided that if a wine producer had not set prices through a fair trade contract, wholesalers *must* post a resale price schedule for that producer's brands. We held that the statute facially conflicted with the Sherman Act because it *mandated* resale price maintenance, an activity that has long been regarded as a *per se* violation of the Sherman Act.

Id. at 3299.

It is noteworthy that in hearings held during the 97th Congress, a National Beer Wholesalers Association witness cited the lower court's opinion in *Norman Williams* as a decision that invalidated beer franchises and therefore placed other territorial restrictions in beer distribution in jeopardy. The witness ignored the facts that the case involved not beer but distilled spirits and that the statute at issue was a designated importer statute. Congressman Hughes asked the witness if a decision by the Supreme Court reversing the lower court would "give you in essence what you are seeking here." The response was: "Yes, sir, provided that every court understands exactly what it means." *Malt Beverage Interbrand Competition Act: Hearings on H.R.3269 Before the Subcomm. on Monopolies of the House Committee on the Judiciary*, 97th Cong., 2d Sess. 59 (1982). But after the Supreme Court did reverse the lower court in its *Norman*

Williams decision, the bill's proponents declared that the case was not that important after all.

B. *There Have Been No Successful Challenges To State Laws Concerning Exclusive Territories In Beer Distribution*

Cases decided in the lower courts since *Midcal* and *Norman Williams* show that there is no need to reaffirm or clarify the scope of the states' authority to regulate beer distribution.

We found no case decided in the last ten years in which a state regulatory scheme concerning beer distribution was challenged. However, cases involving state regulation of wine and distilled spirits leave little doubt that state laws or regulations requiring establishment of exclusive territories in beer distribution are in no danger of being struck down.

In *Allstate Beer, Inc. v. Julius Wile Sons & Co.*, 479 F. Supp 605 (N.D. Ga. 1979), plaintiff, a Georgia wholesaler, filed suit against Wile, another distributor, for tortious interference with its contractual relationship with its supplier. Wile filed a counterclaim in which it sought a declaratory judgment that parts of Georgia's regulatory scheme for alcoholic beverages were unconstitutional. Among the regulations challenged were those which required each shipper of wine into the state to designate sales territories and appoint exclusive wholesalers in each territory. Wile argued that the regulations were preempted by the Sherman Act, a claim which the court easily disposed of. The court held that the regulations were promulgated pursuant to "a clearly defined governmental policy actively pursued by the state," which was to facilitate the enforcement of Georgia's local option law. As such, the regulations fell within the state action exemption to the Sherman Act. *Id.* at 609-10. The court also rejected the claim that the regulations constituted an impermissible burden on interstate commerce, pointing out that:

> Under the Twenty-first Amendment, Georgia could absolutely prohibit the importation of alcoholic beverages into the state. Instead, it chose to leave the "wet" or "dry" decision with the

> individual counties. As a means of controlling and preserving its local option plan, the state afforded itself an easy means of tracing the deviation of alcoholic beverages from "wet" into "dry" counties, a judgment undoubtedly left to the exclusive control of the states by the Twenty-first Amendment.

Id. at 610. Challenges based on the alleged vagueness and arbitrariness of the regulations were dealt with summarily.

It is significant that the only lawsuit we found which involved a challenge to a state law concerning exclusive territories in beer distribution was a suit challenging an Indiana administrative regulation which prohibits establishment of exclusive territories. United Beverage Co. v. Indiana Alcoholic Beverage Comm., 566 F. Supp. 650 (N.D. Ind. 1983). Plaintiffs launched a broad-based challenge to the regulation. They alleged (1) that the regulation was void under the Fourteenth Amendment's Due Process Clause and the Indiana Constitution as an unlawful usurpation of legislative power; (2) that the regulation was void for vagueness; (3) that the regulation impaired obligations of contract in violation of Article 1, § 10, clause 1 of the U.S. Constitution; and (4) that the regulation created an arbitrary and capricious classification so as to deny equal protection of the laws under the Fourteenth Amendment. These contentions were rejected and summary judgment was entered against the plaintiffs.

The court prefaced its analysis of plaintiffs' claims with a discussion of the Twenty-first Amendment. It noted that

> [p]laintiffs are asking this court to decide an issue which is properly the subject of the state's police powers and the extra powers granted under the Twenty-first Amendment. This court should and will exercise the greatest restraint in passing judgment on highly volatile social, economic and political issues that should properly be decided by the Indiana General Assembly.

Id. at 655.

In a detailed analysis, the court then disposed of plaintiffs' arguments that the regulation was void as an unlawful usurpation of legislative power by the Indiana Alcoholic Beverage Commission. It held that there was no precedent for applying federal constitutional standards regarding delegation of legislative power to *state* administrative regulations, and declined to create new law. *Id.* at 656. The unlawful delegation question under the Indiana Constitution was a closer one, but the court concluded that "the Indiana General Assembly can validly delegate discretionary functions to administrative agencies if sufficient standards are imposed to guide the agency in the exercise of its statutory authority." *Id.* at 659. Such standards were found to be present. *Id.* at 659-62. Plaintiffs' remaining arguments, based on the Due Process and Equal Protection clauses of the Fourteenth Amendment, were brushed aside. *Id.* at 662-64.

Perhaps the most noteworthy aspect of the opinions in *Allstate Beer, Inc.* and *United Beverage Co.* was the great respect the courts showed for the states' authority to regulate alcoholic beverage distribution. For example, in *United Beverage Co.* the court refused "to dive headlong into areas of social, political and economic policymaking" and warned that "[i]t is not for this court to impose its beliefs and values with regard to alcoholic beverage regulations upon the citizens of the State of Indiana. . . ." *Id.* at 664. The *Allstate Beer* and *United Beverage Co.* courts are not alone in their respect for state authority to regulate alcoholic beverage distribution. Although we found only one reported decision in the last ten years involving an attack on a state law that required exclusive beer marketing territories, numerous decisions have upheld other types of state laws and regulations involving beer distribution.[8]

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[8] *See, e.g.*, Battipaglia v. N.Y. State Liquor Authority, 745 F.2d 166 (2d Cir. 1984) (law requiring wholesalers to post and maintain monthly schedules of prices and discounts not preempted by Sherman Act), *cert. denied*, No. 84-974 (March 4, 1985); Miller v. Oregon Liquor Control Commission, 1982-2 Trade Cas. (CCH) ¶ 64,862 (9th Cir. 1982) (price-posting law not preempted by Sherman Act); Miller v. Hedlund, 579 F. Supp. 116 (D. Ore. 1984) (regulations requiring beer wholesalers to file price schedules, use delivered prices, and refrain from offering quantity discounts do not offend Sherman Act); Fisher Foods v. Ohio Dep't. of Liquor Control, 555 F. Supp. 641 (N.D. Ohio 1982) (Ohio beer and wine minimum markup law not preempted by Sherman Act); Lanierland Distributors, Inc. v. Strickland, 1982-83 Trade Cas. (CCH) ¶ 65,045 (N.D. Ga. 1982 (upholding regulations requiring brewers to register beer brands, designate wholesalers, and affix "Georgia" labels to cans); U.S. Brewers Ass'n. v. Healy, 532 F. Supp. 1312, 1328-30 (D. Conn. 1982)

III. CONCLUSION

In seeking to justify special treatment under the antitrust laws, the beer bill's supporters paint a picture of an industry under seige in the courts. They also raise the time-honored "states' rights" cry in suggesting that a wave of antitrust litigation threatens to wreck state regulation of beer distribution. The record of reported judicial decisions rebuts both arguments. There have been few challenges to exclusive territorial agreements in the beer industry since 1977, and none have succeeded. Most of the cases that have been brought were initiated by distributors, not against distributors. State laws regulating beer distribution, thanks to recent Supreme Court decisions, are undoubtedly less vulnerable to antitrust challenge than they were ten years ago.

(beer price affirmation statute, which required brewers to sell to Connecticut wholesalers at the lowest price they were selling to any whoesaler in a four-state region, not in conflict with Sherman Act), rev'd. on other grounds, 692 F.2d 275 (2d Cir. 1982), summarily affirmed, 104 S.Ct. 265 (1983); Enrico's Inc. v. Rice, 551 F. Supp. 511 (N.D. Cal. 1982) (regulations requiring liquor wholesalers to adhere to posted prices for one month not preempted by Sherman Act).

THE BEER BILL

An Assessment of the "Malt Beverage Interbrand Competition Act"

S. 412 and H.R. 1108

The Food Marketing Institute (FMI) is a non-profit association that conducts programs in research, education and public affairs on behalf of its 1500 members--food retailers and wholesalers and their customers. FMI's member companies operate more than 17,000 retail food stores with a combined annual sales volume of $130 billion -- half of all grocery sales in the United States. More than three-fourths of the FMI's membership is composed of independent supermarket operators or small regional firms.

FOOD MARKETING INSTITUTE

1750 K Street, N.W., Suite 700, Washington, D.C. 20006 (202) 452-8444

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INTRODUCTION

> "We are unaware of any evidence or principled argument that might justify the [beer] bill, and we believe that enactment of such unjustified special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve this Nation's free market economy."
>
> Federal Trade Commission
> Testimony on the Malt Beverage
> Interbrand Competition Act
> Senate Judiciary Committee
> November 7, 1983

Despite the substantial loss of support for the "Malt Beverage Interbrand Competition Act," the 99th Congress is the third one being asked to deal with what is now commonly called the beer bill. Versions introduced in the 97th and 98th Congresses were identical to S. 412, introduced by Senator Barry Goldwater (R-AZ) on February 6, 1985, and H.R. 1108, by Congressman Jack Brooks, (D-TX) on February 19, 1985.

The purpose of the Act is to grant a special exemption from the antitrust laws to the beer wholesaling industry. This exemption from antitrust laws applicable to other business would place beer wholesalers' exclusive distribution agreements beyond antitrust challenge. A beer distributor with such an agreement would have the exclusive sales rights for a particular brand in that territory--retailers in the territory would be required to buy that brand only from that wholesaler. And, the wholesaler would not be subject to the same antitrust laws applicable to other businesses.

In the 97th Congress the legislation gained 280 cosponsors in the House and 65 in the Senate. This support fell dramatically in the 98th to 149 in the House and 39 in the Senate.

In these two Congresses a total of nine hearings were held in the House and Senate Judiciary Committees. Neither committee saw fit to report the beer bill.

Senator Dennis DeConcini (D-AZ) attempted to attach the beer bill to the Continuing Resolution in the closing days of the 98th Congress. He lost on a germaneness vote of 67 to 28, the second worst defeat of all attempts made to attach a rider to the Continuing Resolution.

A wealth of testimony and information has been compiled over the years which shows, not surprisingly, that enacting the beer bill would:

- be anti-competitive
- increase prices to consumers
- grant a privileged antitrust exemption
- encourage other industries to seek special antitrust treatment
- eliminate the retailer's choice of suppliers
- hurt small business, and
- infringe on states' rights

This report summarizes arguments against the bill, shows the controversy surrounding the issue, and shows the broad opposition to the "Malt Beverage Interbrand Competition Act." The beer bill is a prime example of special interest legislation that is anti-consumer and anti-free enterprise.

OPPOSITION TO THE BEER BILL

As consumers, small business, state attorneys general, the U.S. Department of Justice, and others have spoken out in opposition to enactment of the "Malt Beverage Interbrand Competition Act," or beer bill, a number of groups interested in sound public policy have taken a position in opposing the bill. They are as follows:

Consumer Federation of America

Congress Watch

Consumers Union

National Consumers League

Community Nutrition Institute

National Association of Attorneys General

Federal Trade Commission

Department of Justice

Alliance For a Competitive Marketplace

New York City Consumer Affairs Office

National Small Business Association

American Retail Federation

National Licensed Beverage Association

Food Marketing Institute

National Grocers Association

National Association of Chain Drug Stores

National Association of Convenience Stores

Indiana Malt Beverage Association

National-American Wholesale Grocers' Association

Independent Beverage Distributors Alliance

Many State and Local Grocery and Retail Associations

EXCLUSIVE TERRITORIES -- HIGHER PRICES

Price competition at the wholesale level for a particular brand (intrabrand) is as important as price competition at the retail level. Retailers "shop" among wholesalers for the best price they can get just as consumers will go to a different store for a better price on a particular brand. With exclusive territories a wholesaler cannot sell his brand (or brands) outside his territory. A retailer wishing to stock a particular brand must buy that brand from the area's franchised wholesaler. An exclusive territory for a beer wholesaler thus becomes an exclusive monopoly territory.

The average supermarket carries about 14,000 items. Except for soft drinks (and beer), all these products can be bought from competing wholesalers, or directly from the manufacturer. The cost of each item is reflected in retail prices.

Consumer Opposition:

Testifying before the Senate Judiciary Committee on May 22, 1984 Jay Angoff of Public Citizen's Congress Watch stated "enacting the beer bill would compound the mistake made in 1980 of enacting the soft-drink bill, and would invite other industries to come to Congress seeking an anti-trust exemption. More important, economic theory, empirical evidence and common sense all demonstrate that enacting the beer bill would raise the price of beer."

Also testifying at the May 22, 1984 hearing was David Greenberg, Legislative Director of the Consumer Federation of America. He said, "If enacted, the Malt Beverage Interbrand Competition Act would raise prices, reduce competition, and undermine the equal application of antitrust law which helps form the foundation of free and effective markets in this country."

A May 23, 1984 letter signed by Mark Silbergeld, Director of the Washington Office of Consumers Union states, "In the beer industry, exclusive territories mean higher beer prices."

The New York Experience:

Price monitoring by the New York City Department of Consumer Affairs showed that between January and October 1983 the price of Miller and Anheuser-Busch products increased 30 percent. While New York's mandatory deposit law went into effect during this period, soft drink prices went up only 4 percent. The big beer price increase has been attributed to new exclusive territory contracts for Miller and Anheuser Busch distributors.

In 1976 New York beer wholesalers tried to get the state legislature to enact an exclusive territory law. One document in opposition stated:

> "If enacted, this bill would grant territorial monopolies for the sale of beer to present beer wholesalers....The real objective of this bill and of franchise protection laws in general is special interest favoritism, granting wholesalers a perpetual hold on the distribution of products and foreclosing by legislation any competition....The absence of competition would inevitably precipitate a price rise."

Who said this? The firm Bond, Schoeneck and King on behalf of the Miller Brewing Company in a statement dated March 22, 1976.

Another statement in opposition to the proposed New York beer bill said:

> "This bill would restrict the beer wholesale business to approximately 160-180 N.Y.S. Class C. licenses, while granting territorial monopolies to these businesses....160-180 "primary distributors" may become complacent in dealing with "out of the way" or "small purchase" retailers. The bill is not in the best interest either of the "large purchase" retailer who sells at minimum markup, for he becomes subject to purchasing from the monopolistic beer wholesaler. In turn, the consumer market, under the absence of brand purchasing competition, inevitably rises."

Who said this? The United States Brewers Association in a statement dated May 3, 1976.

What has happened since 1976 is illuminating. Today, just two Miller wholesalers and six Anheuser-Busch wholesalers control the five boroughs of New York City, all of Long Island and Westchester County.

The Indiana Experience:

Today, in Indiana exclusive territories are prohibited. In the early 1970s, competition took the form of "retail hauling" or "dock sales," which meant a wholesaler would sell to any retailer (i.e., even those outside his territory) who came to the wholesaler and picked up the shipment himself. This led to wholesalers delivering outside their territories.

As a result of competition, wholesale and retail beer prices declined approximately 20 percent in Indiana in the mid 70s. In 1979 the Indiana Alcoholic Beverage Commission adopted Rule 28 which, by regulation, prohibits exclusive beer territories. Therefore, Rule 28 ratified what

Indiana's marketplace had been doing for five years or more.

An economist testifying for the beer bill has said that Rule 28 had no effect on the price of beer. The inference, a misleading one, is that competition had no effect on price, when indeed, the price reduction had already taken place. Rule 28 merely confirmed the right of beer wholesalers to be competitive.

In 1981 the Indiana legislature created the Alcoholic Beverage Commission Study Committee. On September 16, 1981 the Beer Distribution Subcommittee, in a report to the full committee, reported that:

> "The effect of retail hauling on the price of beer was a reduction of approximately 20% on the wholesale and retail price. Thus one began to see discounting both with beer and hard liquor at the retail level. The reaction of wholesalers whose markets were now being "invaded" by lower priced beer took three forms: 1) legislation, 2) litigation, and 3) business practices."

In November 1982 the Indianapolis Star compared beer prices in areas of competition versus areas of monopolies in Indiana and found an average price difference of 19.8 percent. Dr. Bruce Jaffee, Professor of Business Economics and Public Policy at Indiana University, has done independent research showing price differentials averaging 8-10 percent, when competition among beer wholesalers was opened up in Indiana.

Since 1974 the Indiana beer wholesalers who do not want to compete have tried in ten legislative sessions to have a law passed allowing exclusive territories. So far they have not been successful. On February 14, 1985 the Indiana House defeated the latest "beer baron bill" 54-41.

Indiana's Attorney General Linley E. Pearson testified against the beer bill before the House Judiciary Committee on November 3, 1983. He stated "As a matter of federal antitrust policy, I oppose any enactment of legislation purporting to "solve" an industry's particular problem, especially in an industry the regulation of which is constitutionally delegated to the states....Uncertainty as to federal law affects the climate in which the states must exercise their Twenty-First Amendment powers, and can only cause problems for the states."

Indiana newspaper quotations indicative of how the issue of exclusive beer territories can become a public concern are cited in the section entitled "Indiana's Debate on Exclusive Territories."

The question must be asked, therefore, why pass a Federal statute which will infringe on a state's authority over the marketing of alcoholic beverages? Before such action is taken it is incumbent upon the industry seeking a special exemption from antitrust statutes to demonstrate that the granting of the exemption will not be anti-competitive, and impose higher prices on consumers. Evidence clearly shows the beer bill fails to meet that test.

BEER MARKETING: THE CURRENT SYSTEM

Twenty-six states require exclusive beer territories, 23 are silent or neutral on the issue, and one, Indiana, prohibits them.

The first section of the Twenty-First Amendment to the Constitution (ratified in 1933) repealed prohibition. The second section reserved for the states the complete authority to regulate the distribution and sale of alcoholic beverages. Therefore, it is for each individual state to decide for itself whether or not exclusive territories are the preferred system for distributing beer.

The Three-Tier System:

Every state requires a three-tier system for the distribution of beer. That is, the brewer, the wholesaler and the retailer must remain three distinct and separate entities in the beer marketing system. The brewer and the retailer may not deal directly with one another. The brewer has to sell his product to a wholesaler and a retailer can only buy beer from a wholesaler.

Proponents claim that the three-tier system is being threatened and that the beer bill is needed to preserve it.

There is no threat whatsoever to the three-tier system. There has been no challenge, no move, in any state to do away with it. It would be a violation of law not to abide by the three-tier system. The pointlessness of this argument is seen in the fact that it would obviously take the willingness of the brewer to sell to a retailer in order to violate the three-tier system. Most brewers and wholesalers are now together in their support for the beer bill and both want the three-tier system.

The three-tier system, in fact, is unique to the alcoholic beverage industry. For other products, goods do not necessarily pass through a wholesaler. Manufacturers and retailers can, and do, deal directly in large volume, and wholesalers in these circumstances are faced with competition from their own suppliers. Beer wholesalers are free of this normal kind of competition.

Beer wholesalers are not threatened. They enjoy many protections and competitive advantages the wholesalers of other products do not have.

The three-tier system gives beer wholesalers *vertical protection* from competition. With the beer bill they are seeking *horizontal protection* from each other. This is an extraordinary position! *Other wholesalers* have *both vertical and horizontal competition*, do very well and are *not* seeking protection.

Because of the three-tier system, beer wholesalers have a guaranteed place in the market. Other factors that limit competition, such as licensing requirements, even further protect beer wholesalers from competition. *More insulation and exclusion from antitrust statutes is not needed nor is it in the public interest.*

State Attorneys General Oppose the Beer Bill:

The National Association of Attorneys General (NAAG) opposes the beer bill. Three state attorneys general have so testified before Congress. Senator Jeff Bingaman, at the time Attorney General of New Mexico, testified on behalf of NAAG on July 28, 1982 before the House Judiciary Committee.

He said:

> "First of all, the bill is Federal legislation in an area that we believe is more appropriately left to the states and one that is left to the states under the Constitution - in particular, the 21st amendment to the Constitution, that is, liquor law regulation or liquor regulation.
>
> Second, it is clear to us that the bill in question is designed to benefit a particular industry, being the brewers and distributors of malt beverages and beer, and we do not see that the justification and necessary burden has been met by them to justify this particular and special treatment through legislation."

State Positions on Exclusive Territories.

I. State law is either silent or neutral regarding exclusive territories

- Alaska
- Arizona
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Hawaii
- Idaho
- Iowa
- Louisiana
- Massachusetts
- Mississippi
- Missouri
- Nevada
- New Jersey
- New Mexico
- New York
- Oklahoma
- Rhode Island
- South Dakota
- Washington
- Wisconsin

II. State regulation prohibits exclusive territories:

- Indiana

III. State law mandates exclusive territories:

- Alabama
- Arkansas
- Georgia
- Illinois
- Kansas
- Kentucky
- Maine
- Maryland
- Michigan
- Minnesota
- Montana
- Nebraska
- New Hampshire
- North Carolina
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- South Carolina
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- West Virginia
- Wyoming

COMPETITION -- BEER WHOLESALING

Intrabrand Competition.

Is the beer industry really highly competitive? Proponents of the beer bill want to ignore the fact that intrabrand (same-brand) competition is an important part of the marketplace. They would have us believe everything is fine with only interbrand competition.

For Example: Let us examine the automobile industry. Assume a consumer wanted to buy a Chevrolet, but only one Chevrolet dealer was allowed in the territory by the manufacturer, and the customer could purchase only from that dealer. Even though the consumer may choose other makes of cars, the lack of intrabrand competition from other Chevrolet dealers would invariably mean a higher price tag. It is exactly the same situation that the beer industry is asking Congress to endorse with this legislation.

Comparing beer to other businesses shows that the beer industry already is one of the least competitive. The beer industry enjoys the lessened competition resulting from many state laws. While those restrictions serve social ends, they make the marketplace less competitive than for other products. (See the discussion on the three tier system for another aspect of how the beer industry is not as competitive as other industries.)

The Department of Justice stated on November 7, 1983 before the Senate Judiciary Committee "In recent years, Congress has increasingly narrowed existing antitrust immunities, and has relied more heavily upon competition, even in highly regulated industries....Establishment of an antitrust standard for the malt beverage industry potentially different from that applicable to other industries would be inconsistent with this desirable trend."

Impact of Exclusive Territories On Small Business:

Small business opposes the beer bill. In a letter dated June 21, 1983, to Congressman Peter Rodino, Chairman of the House Judiciary Committee, The National Small Business Association stated in opposition to the beer bill "Our free market system and the even application of antitrust laws is the best protection for both large and small businesses."

The National Licensed Beverage Association represents over thirty thousand independently-owned bars, taverns and restaurants. In its testimony before the House Judiciary Committee on September 14, 1982 their President, Matthew Protos said:

> "Let's not forget that antitrust laws were enacted for the protection of the small businessman and the consuming public. In this case special exemptions to these laws can only take away that protection and lay open the small businessman and consuming public to the whims of what we call the 'beer barons' who would have exclusive rights to sell their brand of beer to retailers within the boundaries of their kingdoms. As in any feudal economy, this one too would be supported on the back of the 'peasants' - in this case, the consumer."

Proponents state that transshipping wholesalers (i.e., wholesalers who are willing to go outside their designated territory to compete) merely "cherry pick" the high volume accounts and leave the small accounts for the local wholesaler. If serving small accounts is unprofitable, then the argument can be made that exclusive territories are needed for all products sold in smaller stores. This has not been done by other wholesalers serving small stores.

In the materials recently provided to Congress by the National Beer Wholesalers' association they state that "the established local beer wholesaler serving his own territory is required by his contract with the brewery to service all retail outlets, whether they order one case of beer or 1,000." Since exclusive territorial contracts are legal and brewers can specify the type of service to be provided small retailers, a change in the antitrust laws is not needed.

Indiana, which prohibits exclusive territories, provides a good example of how open competition works to the small retailer's advantage. Indiana beer wholesalers are eager for all business, large and small. Consequently they offer their best volume discounts to buying cooperatives of small stores. An added advantage is that instead of several deliveries from different wholesalers of different brands, the small retailer gets one delivery with all the different brands he needs and just one invoice -- an example of the marvel of competition.

ANTITRUST LAWS -- THE BEER BILL

Court Decisions:

Exclusive territories that are pro-competitive are already legal in the beer business, as in other businesses. That is the status quo. Under the guise of "clarifying" or "codifying" present law and Supreme Court decisions, the beer bill would create a different and more lenient standard for exclusive territories in the beer industry.

The Supreme Court, in its 1977 decision Continental T.V., Inc. v. GTE Sylvania, Inc., held that non-price vertical restrains (exclusive territories being such a restraint) are to be held unreasonable only if their anti-competitive impact is not outweighed by pro-competitive justifications. They are to be judged on a case-by-case basis using the rule-of-reason analysis to weigh the pro-competitive and anti-competitive effects of the particular exclusive territory.

The beer bill makes no mention of the rule of reason. The legislation would create a new legal standard that says exclusive beer territories are pro-competitive as long as there is "substantial and effective interbrand competition." This is a more lenient standard.

In early summer 1982 the Supreme Court was deliberating the Rice v. Norman Williams case which dealt with whether or not the rule-of-reason analysis applied to cases involving exclusive territories. At the June 23, 1982 House Judiciary hearing on the beer bill, Congressman Bill Hughes asked Seymour Podolsky, a Michigan beer wholesaler testifying for the National Beer Wholesalers' Association, if the Rice v. Williams case was to affirm the use of the rule of reason, "Wouldn't that give you in essence what you are seeking here?." Mr. Podolsky answered "Yes, sir; provided that every court understands exactly what it means." Mr. Hughes replied, "I think that every one tries to understand what the Supreme Court pronounces."

In July 1982 the Williams case did affirm the use of the rule-of-reason analysis. In October, addressing the National Beer Wholesalers' Association convention (after the beer bill had failed to move in the 97th Congress) the President of the association, Robert Sullivan, stated, "The major battles to establish legal protection for territorial agreements are over." So the beer wholesalers changed their minds and decided (correctly) that existing law and Supreme Court decisions were sufficient protection.

When Mr. Podolsky testified he submitted twenty-five court cases involving exclusive territories to demonstrate the need for clarification of the rule of reason. None of those cases involved the beer industry. The fact is, the present antitrust laws and Supreme Court decisions regarding exclusive territories are well-understood. The beer industry faces no more litigation than other industries. Special antitrust treatment of the beer industry is unnecessary, unwarranted and ill-advised.

Justice Department Opposition:

In the Justice Department's strong statement before the Senate Judiciary Committee on November 7, 1983, in opposition to the beer bill, Assistant Attorney General William F. Baxter said:

> A different, weaker standard for judging exclusive territorial arrangements in the malt beverage industry is undesirable....There is simply no valid reason why the malt beverage industry should not continue to be subject to the same flexible and yet structured antitrust rule-of-reason analysis applicable to most other industries. Indeed, passage of S. 1680 would further erode the general applicability and utility of the antitrust laws."

Would the beer bill clarify existing law? Said Assistant Attorney General Baxter, "[T]he term substantial and effective competition is not defined inthe bill, and its meaning is unclear." Therefore, it is likely to lead to more litigation, not less.

The Federal Trade Commission Opposition:

The Federal Trade Commission (FTC) has testified strongly in opposition to the Malt Beverage Interbrand Competition Act, voicing concerns about the ultimate impact of the beer bill on the consumer. Said Walter T. Winslow, Deputy Director of the FTC's Bureau of Competition before the Senate Judiciary Committee on November 7, 1983:

> "Therefore, we believe that the rule of reason best serves the legitimate intersts of suppliers and distributors - a desire to make their product as competitive as possible in the marketplace - while maximizing consumer welfare. When the existing rule best serves consumers and competition, we can see no reason to introduce a new rule for the malt beverage industry.
>
> We submit, therefore, that it would be a mistake to enact the new standard contained in (the Malt Beverage Interbrand Competition Act). The standard is at best a confusing and superfluous restatement of the current law. And if the standard represents a change in the law, it is likely to injure consumers."

The Federal Trade Commission stated another concern about the effect of creating a more lenient standard. "Moreover, since the antitrust laws currently permit pro-competitive exclusive territorial arrangements, the only exclusive territorial arrangements that could be legalized by a weakening of current antitrust standards are those arrangements whose overall effect is anti-competitive." The beer wholesalers want to put their thumb on the scale of the *rule of reason* to tip the law in their favor.

Proponents claim their special exemption is needed to avoid "frivolous and costly lawsuits." The implication is that the courts are flooded with suits challenging exclusive territories, when in truth the volume of litigation over the past ten years has been modest. There have been only five decisions reported involving exclusive beer territories since the 1977 *Sylvania* decision, and none found an exclusive territory unlawful.

PRESERVING THE STATUS QUO

Avoiding Favored Treatment For One Industry:

Proponents argue that the beer bill is needed to preserve the status quo and that beer wholesalers are being threatened. It is an argument borrowed from the soft drink bill debate, but not relevant in the beer bill debate. Before enactment of the soft drink bill in 1980, the soft drink industry faced disruption because of a Federal Trade Commission suite challenging its exclusive territorial systems. The beer industry faces no such threat.

In fact, it is the beer bill that would change the status quo by creating a new legal standard for judging beer exclusive territories and would provide that one industry with preferential treatment. Instead of the balanced rule-of-reason analysis, which weighs anti-competitive effects and pro-competitive effects equally, the beer bill would create a more lenient standard. Exclusive territories would be pro-competitive as long as there is "substantial and effective interbrand competition." The Federal Trade Commission's testimony on November 7, 1983, before the Senate Judiciary Committee in opposition to the beer bill stated: "Brewers and their chosen distributors may be pleased with a more lenient standard, but consumers and competition would surely be harmed, because a standard more lenient than the rule of reason would by definition permit some arrangements that are on balance anti-competitive."

It will upset the status quo particularly in those 23 states that are neutral regarding exclusive territories. It would upset the status quo by creating a bad antitrust precedent that will spread to other industries. It would upset the status quo by raising beer prices.

Avoiding a Dangerous Precedent:

If the beer industry is granted a special antitrust exemption, other industries will seek similar treatment. Presently, same-brand competition among wholesalers is an important factor to retailers in their competitive arenas. To establish a precedent of exemptions from antitrust statutes that could be extended to other commodities is a major concern of retailers. It is a major reason retailers oppose the beer bill regardless of whether or not state law even permits them to sell beer, and regardless of whether or not state law requires exclusive territories for beer. Exclusive territories that are competitive are already legal and beer wholesalers are protected by the same antitrust laws that protect and govern America's free enterprise system. Why should they have more? No wonder the Department of Justice and the Federal Trade Commission strenuously object to the beer bill.

The Department of Justice in its Senate Judiciary Committee statement of November 7, 1983, stated the beer bill "would invite even further attempts by other industries to seek special-interest legislation. Such a course could only lead to a patchwork of differing antitrust rules that would greatly complicate antitrust enforcement and deprive the antitrust laws of much of their utility."

The Department of Justice testimony presented by Assistant Attorney General William F. Baxter to the Senate Judiciary Committee on November 7, 1983, emphasized the department's underlying concerns about the proposed legislation. Mr. Baxter said:

> "As the January 1979 Report of the President's National Commission for the Review of Antitrust Laws and Procedures concluded, Congress' reliance upon the antitrust laws to protect and promote competition is abundantly justified, and exceptions from this general policy should only be made where there is 'compelling evidence of the unworkability of competition or a clearly paramount social purpose.' No such showing has been made with respect to the malt beverage industry, and we believe none could be made."

OTHER ISSUES

The Beer Industry and Soft Drink Industry Differ:

The beer bill is "me too" legislation. Proponents argue that the beer industry deserves the same protection Congress gave the soft drink industry in 1980. The legislation may be the same, but the two industries have important differences. The soft drink exemption, it was indicated by its supporters, should not be regarded as a precedent. And it should not be. Indeed, if beer distribution territories are also put beyond the reach of the antitrust laws, which industry will be next to say it is equally as deserving of special protection?

MAJOR DIFFERENCES

SOFT DRINK	BEER
Distributor is also a bottler, with additional capital requirements of an entire bottling plant, i.e. he is similar to a processor or manufacturer.	A beer distributor is strictly a wholesaler. He is not a manufacturer or processer.
No state laws specifically regulate distribution.	Highly regulated by the states - licensing and pricing laws already limit competition.
No requirement exists that there be an independent wholesaler between manufacturer and retailer.	Three-tier distribution system prevails. States require that independent wholesalers exist between brewer and retailer. Thus, wholesalers already enjoy the unusual privilege of a guaranteed place in the distribution system because they are free from vertical competition.

Nationwide system of exclusive territorial franchises used by all major soft drink manufacturers had been in place for 75 years.	Distribution system and use of exclusive territories vary from state to state.
FTC found system of exclusive franchises per se illegal - system faced disruption.	No FTC, state or federal court case finding beer distribution territorial arrangements per se illegal - no legal threat to system exists.
Legislation was necessary to preserve the status quo and prevent disruption.	Legislation will upset the status quo.

Exclusive Territories -- Fresh Beer?

Natural market forces on the wholesale level as well as the retail level make sure consumers get fresh beer (not to mention fresh eggs, bread, milk, etc). A change in the antitrust laws is not required.

Additionally, beer is not really considered a perishable product. It has an unrefrigerated shelf life of between 75 and 120 days - quite a bit longer than the truly perishable items sold in grocery stores. If staleness were a problem in beer, the brewers could easily open-date their products as is done with perishable items.

If exclusive territories are needed to assure the freshness of beer, then we surely need exclusive territory guarantees for the producers and wholesalers of vegetable, dairy and bakery products. This is a good example of why retailers worry seriously about the precedent that enacting the beer bill would create. Prices of basic food commodities would go up if their producers and wholesalers began instituting exclusive territories.

The question of the freshness of a product is one to be settled between the retailer and his supplier. Of course, if laws dictate that there can be only one supplier, it places the retailer in a more difficult position. In any event the connection between product freshness and special antitrust law exemption is tenuous at best.

Transshipping:

Beer wholesalers use the term transshipper to imply an interloper or bootlegger. But, a transshipper is simply a wholesaler who is willing to sell outside his territory. Regardless of the fact that this is customary practice for other products and is a natural competitive mechanism for keeping other wholesalers aggressive, efficient and price-competitive, exclusive territory beer wholesalers view transshipping differently. They are not used to intrabrand competition as are the wholesalers of other products, so the beer wholesaler sees transshipping as an evil practice rather than usual and acceptable competition.

Richard M. Quinn, a competitive wholesaler from Indiana, testified against the beer bill before Congress on November 7, 1983. He said, "Proponents of this legislation would have you believe that transshippers are fly-by-night opportunists. In my opinion a transshipper is just a negative way of saying competitor....[P]roponents of this legislation have painted an inaccurate and misleading picture of wholesalers who want to compete."

Proponents claim that beer wholesalers are being threatened by transshippers. If this is indeed a problem, it is more from the beer wholesaler's unwillingness to compete than from anything else.

It certainly completely overlooks the interests of the consequences and yet it is the consumer whom the antitrust laws have been designed to protect.

Lenny Misciagna is an independent wholesaler, or transshipper, in New York. In his testimony before the House Judiciary Subcommittee on Monopolies and Commercial Law on November 3, 1983, he described his service this way:

> "In addition to discounting and helping to keep prices to the consumer down, the independent wholesaler performs services for the retail store. The independent mixes product, including various brands of beer and soda, and sells the mixed load to the store at truckload prices. The independent, in effect, becomes the storeroom for retail stores, delivering small loads frequently during each week, and on weekends. The independent also serves as a bank for local retail stores in that the stores need not invest large capital in beverage inventory. The franchised distributor has not and will not provide these services."

The transshipper is also depicted as the unethical businessman who sells stale beer. The franchised wholesaler allegedly is then stuck with covering the cost of the bad product. An antitrust exemption is certainly not needed to address this problem. The marketplace and the brewer-wholesaler contract can take care of it. Such a transshipper may fool some retailers once, but not for long. He will soon be out of business for lack of customers. Transshipped beer, stale or not, can be traced to the original wholesaler by the codes on the cans. The brewer-wholesaler contract, which can prohibit transshipping, can then be enforced. (The discussion on small business also touches on the transshipper non-issue.)

CONGRESSIONAL TESTIMONY STRONGLY AGAINST ENACTMENT - WILL CONGRESS LISTEN?

While beer wholesalers say the "Malt Beverage Interbrand Competition Act" is harmless and does not really change the law, the following quotes from recent Congressional testimony are indicative of the opposition to the bill, of how anti-competitive the beer bill is, and of how much the beer wholesalers stand to gain from the antitrust exemption they are trying so hard to get, through enactment of H.R. 1108 and S. 412.

The quotes are from testimony before the House Judiciary Subcommittee on Monopolies and Commercial law on November 3, 1983 (*), and before the Senate Judiciary Committee on November 7, 1983 (**).

Robert Abrams
New York Attorney General*

"In price surveys conducted by the New York City Department of Consumer Affairs, soft drink prices have risen 4% in the first ten months of 1983, whereas the beer prices surveyed have risen approximately 30%. Consumer Affairs used Budweiser and Miller High Life as the beer brands surveyed. The grossly disproportionate rise in beer prices is due in large part to the effects of the distribution monopolies instituted by Anheuser-Busch and Miller Brewing in 1982."

"H.R. 2262 is a meritless piece of special interest legislation, designed solely to provide one segment of one industry with license to eliminate competition and thereby nullify the basic guidance mechanism of the American system of free enterprise."

Linley E. Pearson
Indiana Atorney General*

"[T]he first person to testify against repeal (of Indiana's Rule 28 which prohibits exclusive territories) owned a very small liquor store in Morgantown, Indiana. She testified that under exclusive territories there seemed to be little concern for quality,...her warehouseman did not check the dates of her products, and that she was never offered a promotional price or idea....In contrast, she testified her current "transshippers" never left a load of beer without going into her store and checking dates and temperatures....She further stated that her price lists showed that if Rule 28 were repealed, the price of her beer would rise at least two and possibly three dollars a case."

"As a matter of federal antitrust policy, I oppose any enactment of legislation purporting to 'solve' an industry's particular problem, especially in an industry the regulation of which is constitutionally delegated to the states....Uncertainty as to federal law affects the climate in which the states must exercise their Twenty-first Amendment powers, and can only cause problems for the states."

Dr. Bruce L. Jaffe
Associate Professor of Business Economics and Public Policy,
And Director of Doctoral Programs in Business, Indiana University*

"The Indiana situation strongly suggests that both intra and interbrand price competition will be restricted if this bill is enacted. The impact on prices will be substantial; the Indiana experience suggests about 10%. Some individual differences in fact were substantially above 20%.... Simply put, the proposal is anti-consumer and anti-competitive legislation."

"Not only did local wholesalers (those who did not start the competition) not engage in any intrabrand competition until possibly 1977, there was also a remarkable absence of significant inter-brand competition among these wholesalers. The common pricing scheme was to charge the same price for all popular beers, all premium beers, and all super premium beers, regardless of the brand within the category. Prices for all brands within a category were typically changed simultaneously....Thus, it appears that exclusive franchises reduced both intra and interbrand price competition."

Dr. W. John Jordan
Associate Professor of Economics, Seton Hall University, New Jersey*

"An indication of the savings to retailers available by buying from a transshipper can be found in a comparison of a recent set of prices offered by a transshipper with those set by all of the Anheuser-Busch and Miller distributors in the State.. [F]or Miller High Life beer (the savings for) a 100 case purchase ranges from 5% to 17%, for 300 cases from 4% to 17%, and for 1000 cases from 1% to 17%....In addition...are the sizable amounts of savings available if a retailer could purchase from any designated wholesaler he chose. For example, retailers located in the region serviced only by Miller distributor #5 pay 12% more than retailers located in the territory controlled by Miller distributor #7."

"I was surprised at the suggestion by proponents of this bill that the establishment of exclusive distribution territories will not lead to higher beer prices for retailers and consumers. This conclusion is contrary not only to the results of my research but also to what many economists would expect to find in an industry as concentrated as the beer industry."

Jay Angoff
Public Citizen's Congress Watch*

"The industry's principle argument in support of the beer bill is that distribution monopolies are necessary to guard against stale beer...I have brought along an old can of Stroh's and a can of Stroh's I bought this morning. I would like to submit these two cans for the record, and I respectfully challenge the members of the Committee, or the Committee staff, to tell which is the old Stroh's and which is the new Stroh's."

Leonard Misciagna
The Independent Beverage Distributors Alliance, Ltd., New York*

"In addition to discounting and helping to keep prices to the consumer down, the independent wholesaler performs services for the retail store. The independent mixes product, including various brands of beer and soda, and sells the mixed load to the store at truckload prices...The independent also serves as a bank for local retail stores in that the stores need not invest large capital in beverage inventory. The franchised distributor has not and will not provide these services. The consumer will be the biggest loser of all as Budweiser and Miller prices continue to rise."

"Today, just two brands, Anheuser-Busch products and Miller products, account for approximately two out of every three cases sold in New York City. The current market power of the franchised distributors is awesome. Just two (2) Miller wholesalers and six (6) Anheuser-Busch wholesalers now control the five boroughs of New York City, all of Long Island and Westchester County -- a combined population of over 11 million people....Competition from transshipping was the only free market price control over the otherwise unbridled franchise distributors."

William F. Baxter
Assistant Attorney General, Antitrust Division
U.S. Department of Justice**

"There is simply no valid reason why the malt beverage industry should not continue to be subject to the same flexible and yet structured rule-of-reason analysis applicable to most other industries. Indeed, passage of S. 1680 would further erode the general applicability and utility of the antitrust laws. Accordingly, the Department of Justice strenuously opposes enactment of S. 1680."

"In many, if not most, industries, the structural characteristics of production and distribution significantly reduce the likelihood that exclusive territories will or can be used to generate anti-competitive results....Unfortunately, none of the above mitigating factors is present in the malt beverage industry. Indeed, this industry appears to be one in which the risk that widespread use of exclusive territories may produce anti-competitive effects is almost uniquely high."

"As the January 1979 Report of the President's National Commission for the Review of Antitrust Laws and Procedures concluded, Congress' reliance upon the antitrust laws to protect and promote competition is abundantly justified, and exceptions from this general policy should only be made where there is "compelling evidence of the unworkability of competition or a clearly paramount social purpose." No such showing has been made with respect to the malt beverage industry, and we believe none could be made."

"In recent years, Congress has increasingly narrowed existing antitrust immunities, and has relied more heavily upon competition, even in highly regulated industries. Such movement has been seen, for example, in the airline, trucking, rail, and intercity bus industries and is presently occurring in the telecommunications and financial institution industries. Establishment of an antitrust standard for the malt beverage industry potentially different from that applicable to other industries would be inconsistent with this desirable trend."

Walter T. Winslow
Deputy Director, Bureau of Competition
Federal Trade Commission**

"First, the Commission fully supports Congress' traditional refusal to grant an industry special status under the antitrust laws unless and until the industry has presented compelling evidence of the unworkability of competition or of a clearly paramount purpose. We submit that no such showing has beenmade or could be made by the malt beverage industry so as to warrant special antitrust treatment."

"We are unaware of any evidence or principled argument that might justify the bill, and we believe that enactment of such unjustified special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve this Nation's free market economy."

Richard M. Quinn
Sales Manager, The Beer Company
Indianapolis, Indiana**

"As one who has spent twelve years as a beer wholesaler in Indiana, both as a traditional protected wholesaler and more recently as an aggressive, competitive transshipper, I can state with complete confidence that in my experience A) It is a lot easier to operate in a protected market, and B) In order to survive in the free enterprise system competition forces one to reduce prices, effect economies in your operation, increase volume, and target specific geographical markets as well as retail account profiles."

"Competitive wholesalers offer their best volume discount prices to buying cooperatives. That is, small retailers combine their orders and buy as a cooperative and thus receive the same price advantage that our largest volume buyers achieve."

"Proponents of this legislation would have you believe that transshippers are fly-by-night opportunists. In my opinion transshipper is just a negative way of saying competitor."

"Proponents of S. 1680 claim that the beer industry in Indiana is in a state of chaos and shambles and that exclusive territories are needed to restore an "orderly market."...Yes, if you have the mindset of an inhabitant of an insulated little world apart from the realities of the free enterprise system, you would see Indiana's wholesale beer market as chaotic. But, it is, in effect, the real world of competition. It is healthy for business and good for the consumer."

"Proponents claim that we are free riders and they have higher costs than we do. This is simply not true. We have advertising expenses. We operate under the same brewery agreements which incur the same costs. We have a temperature-controlled warehouse, trucks painted to brewery specifications, uniformed employees who are members of Teamster Local 135, call-frequency standards, sales goals and a computerized ordering system."

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*In testimony before the House Judiciary Subcommittee on Monopolies and Commercial Law on November 3, 1983.

**In testimony before the Senate Judiciary Committee on November 7, 1983.

MAJOR EDITORIALS

[From the New York Times, Aug. 31, 1982]

BAD BEER BUSINESS

If soft drink distributors can get away with it, why not us? That, in a phrase, is the best case offered by America's beer wholesalers, who want to legalize territorial monopolies. Unfortunately, Congress, intoxicated by the prospect of campaign support, appears all too ready to go along.

Brewers sell beer to distributors, who in turn sell it to bars, restaurants and groceries. The number of brewers has been steadily shrinking. But beer distribution remains a rough-and-tumble world, with some 4,500 wholesalers fighting it out for pieces of the market across the country. Now the distributors are looking for a little "order"—the legal right to negotiate exclusive territorial contracts with individual brewers.

Such contracts wouldn't raise the prices of a six-pack, the distributors assert. One dealer might control the sale of, say, Budweiser. But the Bud seller would still face stiff competition from the distributors of Schlitz and Miller and Coors.

That argument might fly at a convention of beer distributors but it hasn't made any converts at the Justice Department. Beer drinkers show strong brand loyalty notes Justice, loyalty purchased with expensive advertising campaigns by the brewers. Today, beer prices are kept down by competition between distributors: if one raised the price of Bud, the corner grocer would simply go to another distributor. But if a single distributor controlled Budweiser sales, there would be a strong incentive for the wholesaler to charge whatever the market would bear.

The argument in favor of legal monopoly is so weak that the beer distributors would probably be ashamed to make it, were it not for an inspiring success of the soft drink industry. In 1980, a bill permitting soda pop manufacturers to grant exclusive distribution franchises whizzed through Congress with hardly a dissent. Why discriminate, the beer lobby asks, in favor of one beverage? Why indeed: a responsible Congress would repeal the soft drink distributors' privilege as swiftly as it approved the privilege to begin with.

But that is not a realistic possibility. The soft drink deal was long ago bought and paid for with campaign contributions; Congress is not about to renege for a reason as trival as public interest. Nor will it be easy to defeat the beer bill: a majority of Congressmen, alert to the prospect of easy campaign cash, have signed on as cosponsors.

The best hope is that the beer bill will remain tied up in the House Judiciary Committee, whose chairman, New Jersey's Peter Rodino, is no patsy for special-interest legislation. But Mr. Rodino will not be able to keep it there indefinitely unless his colleagues learn there is some penalty attached to a vote. It is up to America's beer drinkers to tell them what they think of monopoly prices.

[From the Lafayette (IN) Journal & Courrier, Nov. 8, 1983]

CAPITOL TRY

What beer wholesalers lost in Indiana, they're trying, in another way, to get nationally with pressure for exemption from the federal anti-trust act for monopolies on exclusive selling territories.

Overflow crowds of Hoosiers turned out at the last legislative session for hearings on proposals to change Indiana law to permit the wholesalers territorial monopolies. Hoosiers' sentiments, echoed by the legislature, were a resounding no to state approval of exclusive selling territories and a loud yes for open competition for markets.

In considering an anti-trust exemption for beer wholesaling exclusive selling territories, Congress called Indiana Attorney General Linley Pearson to testify on Indiana's viewpoint, since Indiana and Virginia are the only states specifically forbidding such monopolies, exclusive of any federal anti-trust applications.

Pearson told the House subcommittee of the strong Indiana sentiments and urged the Congress not to change its anti-trust laws to accommodate a particular industry. He reminded the committee that states have constitutional authority over regulations of beer distibution and that federal anti-trust exemptions—even though such action would not directly change the state's own prohibition of selling territories—affects the climate in which the states must exercise their 21st Amendment powers.

Pearson and Indiana know, first-hand, the determination of members of the beer wholesaling industry not to compete for business unless they have to. Congress should know it too, or will by the time the beer baron lobby applies pressures it has used in Indiana.

Pearson is right. The federal government should not even consider changing its anti-trust laws in any case where open competition is possible. It is the only pricing and supply protection the public has. And that should be the federal government's, as well as the state's, first responsibility.

[From the Washington Post Sept. 13, 1982]

THE SIXPAC BILL

Among the bills Congress is considering and that it may, in the rush of activity at the end of the session pass is one that would almost surely raise the price of a commodity many citizens consider as American as apple pie: beer. The bill is the Malt Beverage Interbrand Competition Act (yes, that's really what they call it), and its purpose is to allow beer producers to agree to give their wholesalers exclusive rights to sell their brands in a particular territory. Its chief backers are the National Beer Wholesalers Association and its political action committee which is called, truly, SIXPAC.

That seems to us—and, more relevant, to the Justice Department and the Federal Trade Commission as well—to be an unwarranted exemption from the antitrust laws. It's illegal generally for firms that would otherwise be competitors to agree not to compete in a particular market. The reason is fairly obvious each firm could charge what it pleased in that market. Backers of the SIXPAC bill argue that that would not be the case here, and they are partially right—but only partially. It is true that a wholesaler with exclusive rights to sell Budweiser, for example, in the Washington market would not charge too much, or he would lose sales to the wholesaler with exclusive rights to sell, say Miller. And there could still be keen competition between wholesalers handling different brands in servicing bars and restaurants. But price competition would to some extent be dampened. Beer producers like Miller and Budweiser advertise their brands heavily, and many consumers have a strong preference for a particular brand of beer. Beer wholesalers with exclusive rights to provide such consumers with beer will be able to charge more than they would if they had competition.

The wholesaling of alcoholic beverages is already a business tightly regulated by the states, and rightly so. In many states it is a business difficult to enter. This is all the more reason, we think, not to allow division of territory between wholesalers. Advocates of the SIXPAC bill argue that Congress has already passed a bill allowing division of territory between soft-drink wholesalers; this was a measure passed after the FTC threatened a marketing arrangment that had prevailed in the soft-drink industry thoughout the 20th century. But the fact that anti-competitive agreements were tolerated a long time in one business was not a good argument for legalizing them in that business and is certainly not a good reason to extend that principle to another business, one in which such territorial divisions have been illegal in most states.

Unfortunately, 278 members cosponsored the SIXPAC bill introduced by Rep. Jack Brooks (D-Tex.) in the House, and 65 members cosponsored the same bill introduced by Sens. William Proxmire (D-Wis.) and Robert Kasten (R-Wis.) in the Senate—majorities in both houses, but numbers short in each case of the two-thirds needed to override a presidential veto. We hope that the strong opposition from the Justice Department means that President Reagan will indeed veto the SIXPAC bill if it is passed, and that this will not be one of those anticompetitive laws a smart lobby slips through while ordinary citizens are not paying close attention.

[From the Chicago Sun-Times, Aug. 22, 1982]

INDUSTRY IS OUT TO MUG YOU

We've watched so many athletes and lumberjacks peddle Miller's and Michelob on TV that we naturally associate beer with tough, macho independence.

So it's really pathetic to see the beer industry run whining to Washington, begging Congress to shield it from competition.

It wants a law that allows brewers to hand out territorial monopolies to distributors. If bars and stores wanted to sell a brand, they'd have to buy it from the anointed distributor. Nobody could undersell the competition, because there wouldn't be any competition.

Congress Watch, the pubic interest group, says the bill would raise beer prices 20 percent. That's how much it says beer prices fell in Indiana after the legislature repealed a monopoly-distribution law.

The industry says there'll still be competition among brands, but that's not likely as long as it spends millions on advertising to persuade drinkers to order a specific brand regardless of price. And beer drinkers don't have many brands to choose from; two companies control more than half the market.

Distributors argue that the bill merely codifies court decisions allowing monopoly distribution. If that's true, Congress should pass a law overturning those decisions.

The industry hopes to back this bill with $250,000 in campaign contributions, so it will be tough to stop. But if bars and liquor stores started a petition drive against the bill, beer drinkers might have a chance of winning.

[From the Los Angeles Times Sept. 29, 1982]

SUDS IN YOUR EYE

It is a rare—you might even say strange—jogger who wonders how there happens to be a cold beer on hand at the end of a hard evening's run.

But how the beer gets there is a matter of intense debate and aggressive lobbying in Congress that has the beer drinkers of America bouncing between the 21st Amendment to the U.S. Constitution and the Sherman Antitrust Act.

The largest-selling beers in California are distributed by wholesalers with exclusive franchises granted by brewers. The arrangement is blessed by state law and the 21st Amendment, which repealed Prohibition and gave states broad authority to decide how alcohol should be distributed and sold.

A market owner who wants one of these big-selling beers in stock must deal with a brewer-designated distributor. There is little haggling over the wholesale price.

The state law permits such exclusive franchises but does not require them. As a result, many brewers let distributors compete in the same territory, and liquor stores and grocers often can bargain down prices by as much as 25%.

In 1972, Indiana struck down exclusive beer distributorships. In recent years, distributors in the 8 states that permit exclusive territories have been sued repeatedly on the grounds that such franchises are monopolies and as such violate federal antitrust laws.

So beer distributors asked Congress to give them an exemption from the antitrust laws, to protect the franchise system in states where it exists.

Brewers and distributors argue that they can keep better control over their product between the brewery and the refrigerator if they can pick their own distributor.

Ratailers argue that a federal exemption for beer franchises would mean that all beer eventually would go through exclusive outlets and that they could not longer shop around for a better price.

Even a strange jogger would agree that there is something to be said for keeping beer prices as low as possible, but it seems to us that there is a more important issue.

The Justice Department is resisting the exemption of the premise that beer has no better claim for special treatment than any other product.

The department's lawyers also warned Congress that every exemption from antitrust laws makes it more difficult to apply the laws to other industries.

The Justice Department advice is sound, and Congress should accept it and leave the antitrust laws as they are.

[From the News, Florence, SC, Sept. 6, 1982]

HELP FOR BEER LOBBY

In an era when so many interest groups have gained special favors from government, it's not surprising the nation's malt beverage industry wants its share, too. It is odd, however, that lobbyists for the breweries and their wholesalers have persuaded every member of the South Carolina congressional delegation except Sen. Thurmond to support the idea.

At issue is the proposed Malt Beverage Interbrand Competition Act. And, as the name readily implies to those familiar with political corruption of our language, the bill is as anti-competitive as can be.

This legislation would allow breweries to prohibit competition among their distributors. The wholesaler of a particular brand of beer would be assigned a territory, and no near or distant distributor of that brand could compete with him in that territory.

Congressman Carroll Campbell is quoted as giving the industry's view of the matter. "Nothing in this bill would dampen competition. Competition among all brands would be continued," he said.

In fact, retail price competition could be virtually cut off at the wholesale level. Retailers, including chain supermarkets, in a distributor's assigned territory could buy a brand of beer from only one source.

An attorney for the Justice Department's Antitrust Division, testifying against the proposed law before Sen. Thurmond's Judiciary Committee, said that just four breweries now command 67 percent of the beer market nationally, and that in most states the market share domination is much higher.

In 30 states, for instance, four breweries have in excess of 80 percent of the market. In South Carolina, four of them have more than 90 percent of the market: Anheuser-Bush, 44 percent, Miller 23 percent, Schlitz 19 percent and Pabst 5 percent.

Clearly, price competition isn't driving the major breweries and wholesale distributors who're behind this bill out of business. It's just keeping them on their toes, and allowing retailers to give their customers the best buy possible.

Probably what brought about this anti-competitive measure was the success the soft drink industry had in getting the same thing from Congress in 1980. The Reagan administration wasn't around to oppose that as it is opposing the beer industry.

Congressman Campbell and others in the South Carolina delegation were not elected by special interests, but by voters who generally want more instead of less competition in all markets.

Instead of most of the delegation working to limit beer industry competition, they should be working to put the soft drink industry back on a more competitive basis.

[From the Chicago Tribune, Aug. 26, 1982]

ARE BEER MONOPOLIES COMING?

(By Stephen Chapman)

Beer monopoly. The very term is enough to curdle the blood of every God-fearing American. What if there were only one brand of beer? What if the brewer could change whatever he wanted? What if . . . well, the possibilities are grim.

That is the specter raised by critics of a bill to legalize exclusive territories for beer distributors—in essence, monopolies on a particular brand in a particular area. A brewery designating one firm as its only wholesale outlet in Phoenix, for instance, would be able to do so without fear of anti-trust problems. The critics period price increases of 20 percent or more if the bill passes.

Any beer drinker who resides, as I do, in Evanston, the birthplace of the Women's Christian Temperance Union, is acutely wary of any interference with the wholesome consumption of alcohol. But the threat presented by this bill is no threat at all.

We have come a long way from the 16th century Tartars, who scorned Russians for not only eating wheat—"the top of a weede," they called it—but, worse still, drinking it. The U.S. enjoys the high cultural distinction of being the world's biggest producer of beer. Americans drink 132 million barrels of beer each year, which works out to 24 gallons a year for every man, woman, and child. (That's 11 cases, if you're counting.) Those figures put us at a respectable 12th in the world in per capita consumption.

So beer legislation is serious business. But contrary to what its opponents suggest, this bill would not wreak any great change in the American beer market. Most beer is already distributed through wholesalers who enjoy territorial monopolies. The bill would merely certify the legality of these arrangements—which now are vulnerable, at least theoretically, to anti-trust lawsuits. Prices shouldn't be affected.

The talk of beer monopolies is also considerably overwrought. The critics point with alarm to the fact that 83 percent of all beer sold in this country comes from only six companies. The answer to that is: so what? Six firms is plenty, as long as there are no legal obstacles to competition—such as barriers to new firms or restrictions on price competition.

The key to monopoly is not the number of firms but how they behave, and the beer industry is intensely competitive. Ask Schlitz, which has gone from the nation's largest brewer to a struggling third (and occasionally fourth). Beer drinkers can seldom turn on the TV or radio without being wooed to Miller or Pabst. Monopolists, by contrast, don't compete for customers, because customers have no choice. There is also brisk competition among retail sellers—liquor stores, supermarkets, and taverns.

That said, it's still worth asking why even this small measure of monopoly should be allowed. The reason is that it serves the interests of both brewers and consumers. If exclusive territories were merely a way to jack up prices, why wouldn't breweries simply charge higher prices to their distributors, thus capturing the monopoly profits for themselves?

These monopolies grow out of an unfortunate characteristic of beer—its perishability. All beer begins to deteriorate as soon as it is finished brewing, and the sooner it is drunk the better it tastes. Bottled or canned beer has a shelf life of only 85 to 115 days; draft beer, which isn't pasteurized, decays even more rapidly.

If a brewer wants to protect his beer's reputation, he has to find a way to make sure it's sold while still fresh. A common solution is requiring distributors to visit retail outlets regularly to see that stocks are refrigerated and rotated. It's easy to enforce the rule on one distributor—if a brewer finds stale beer in Omaha, his Omaha distributor is to blame. With 20 distributors, it's a lot harder.

A distributor will agree to perform these costly services if he knows he can't be undercut by other distributors who don't. Benjamin Klein, a UCLA economist, says having several distributors creates a "free rider" problem: "If you have 25 distributors and one of them sells stale beer, all the distributors suffer, but the culprit bears only one-twenty-fifth of the cost—and he can charge a lower price. And a distributor who makes sure his beer is sold when it's fresh gets only one-twenty-fifth of the benefit."

It is argued that retailers will sell only fresh beer to protect their own reputations. But a beer drinker who buys a stale six-pack will probably buy a different brand the next time, rather than go to a different liquor store. In most cases, says Klein, he'll blame the brewery rather than the retailer. That's the difference between beer and other perishable goods, like bread or milk.

If this bill passes, its critics may feel like the man who hoped to die in a tavern, so the angels would say, "God be merciful to this drinker!" I hate to discourage prayer, but in this case a free and open marketplace is protection enough.

[From the San Diego Union, Sept. 24, 1982]

GUZZLER'S BEWARE

The fact that beer drinkers vastly outnumber the brewers and distributors of their favorite beverage seems to have eluded members of Congress who otherwise are adept at counting votes. Under pressure of industry lobbyists, a majority of representatives and senators have signed on as co-sponsors of a bill that would sanction price-fixing in the beer business.

Having done their duty to the industry by sponsoring the bill, the lawmakers can now do their duty to consumers by putting it on the shelf and leaving it there.

The bill is called the "Malt Beverage Interbrand Competition Act"—or the Beer Monopoly Protection Act by those who look past the label to the murky contents of the bottle. It would exempt brewers and distributors from anti-trust laws which otherwise might be invoked to break up territorial monopolies that prevent competition in the wholesaling of beer.

The issue is not unfamiliar to California, where such monopolies are sustained by state regulations. Indeed, Indiana appears to be the only state with unregulated wholesaling of beer, and a recent survey showed that the price of a six-pack in Indiana is a quarter to half a dollar less than in surrounding states.

Under the monopoly system, a retailer can obtain a particular brand of beer only from a single distributor who has an exclusive right to sell it within his territory. The retailer cannot bargain with the brewer or another wholesaler for a better deal. The distributors argue that without their monopoly, there would be "chaos" in the distribution system. Another word for that chaos, of course, is competition.

If monopolies in beer distribution can be challenged under federal anti-trust laws, so much the better. There are said to be 72 million beer drinkers in America, compared to the 4,700 wholesale distributors who are trying to protect their exclusive rights in the marketplace with a bill in Congress. What the guzzlers lack, obviously, is a lobby of their own.

[From the Greenville (SC)]

STATE DELEGATION BACKS BEER LOBBY

In an era when so many interest groups have gained special favors from government, it's not surprising the nation's malt beverage industry wants its share, too. It is odd, however, that lobbyists for the breweries and their wholesalers have persuaded every member of the South Carolina congressional delegation except Sen. Thurmond to support the idea.

At issue is the proposed Malt Beverage Interbrand Competition Act. And, as the name readily implies in those familiar with political corruption of our language, the bill is as anti-competitive as can be.

This legislation would allow breweries to prohibit competition among their distributors. The wholesaler of a particular brand of beer would be assigned a territory, and no near or distant distributor of that brand could compete with him in that territory.

Congressman Carroll Campbell is quoted as giving the industry's view of the matter. "Nothing in this bill would dampen competition. Competition among all brands would be continued," he said.

In fact, retail price competition could be virtually cut off at the wholesale level. Retailers, including chain supermarkets, in a distributor's assigned territory could buy a brand of beer from only one source.

As for continued competition among brands, it would not mean much without free-market pricing of each brand, because of market domination by a few brands.

An attorney for the Justice Department's Antitrust Division, testifying against the proposed law before Sen. Thurmond's Judiciary Committee, said that just four breweries now command 67 percent of the beer market nationally, and that in most states the market share domination is much higher.

In 30 states, for instance, four breweries have in excess of 80 percent of the market. In South Carolina, four of them have more than 90 percent of the market: Anheuser-Bush, 44 percent, Miller 23 percent, Schlitz 19 percent and Pabst 5 percent.

Clearly, price competition isn't driving the major breweries and wholesale distributors who're behind this bill out of business. It's just keeping them on their toes, and allowing retailers to give their customers the best buy possible.

Probably what brought about this anti-competitive measure was the success the soft drink industry had in getting the same thing from Congress in 1980. The Reagan administration wasn't around to oppose that as it is opposing the beer industry.

Congressman Campbell and others in the South Carolina delegation were not elected by special interests, but by voters who generally want more instead of less competition in all markets.

Instead of most of the delegation working to limit beer industry competition, they should be working to put the soft drink industry back on a more competitive basis.

[From the Detroit News, Aug. 26, 1982]

HEAD OFF THE BEER BILL

To listen to the beer brewers and their big distributors tell it, Congress is about to do beer drinkers a terrific favor.

A bill pending in the House Monopolies subcommittee and the Senate Judiciary Committee, they say, would have the federal government guarantee an orderly supply of beer—and keep it fresh as an October morning.

But blow away the foam and it's clear the bill would almost certainly boost beer prices for many Americans. And who needs that?

Under the measure, brewing companies would be allowed to grant territorial monopolies to distributors. And once a territory was designated for a single distributor, all other distributors of the same brand would be forbidden to sell in the area. Thus, "drop-haulers" or free-lancers who pull up to a brewery with no more investment than the wholesale price of a load of beer and their own rig, wouldn't be permitted to undersell established distributors with their own fleets, warehouses, and staff.

In that way, the big distributors, who supposedly take it upon themselves to remove stale beer from taverns and grocery stores, while maintaining an orderly flow to the marketplace, would be rewarded.

Some states, including Michigan, already have laws which allow brewers to grant distributors such exclusive territories. A few states expressly prohibit exclusive territories, and the rest are silent. In practice, this means that in the majority of states the brewers already can make exclusive marketing deals with distributors. But unless state laws or regulations, as in Michigan, expressly approve such deals, the brewers and distributors are subject to anti-trust lawsuits. So big beer wants Congress to give it a little anti-trust insurance.

Two years ago, Congress granted the same sort of legislation to the soft-drink industry. The price of pop has been climbing ever since. And one congressional committee staffer says the wine industry is just waiting to see what happens with the beer bill.

The argument in favor of distribution monopolies for beer is unconvincing. It eliminates intra-brand price competition while providing no real benefit for the consumer beyond an assurance of fresh beer, which is hardly a major worry. If the bill is passed, the restrictive state legislation, as in Michigan is reinforced, and other industries can then press their case, citing the examples of both the soft-drink and beer legislation.

That prospect makes the risk of a little stale beer seem, well, small beer.

[From the Greensboro Daily News, Sept. 21, 1982]

A Bitter Brew

It may not be as powerful as, say, the trucking lobby or organized labor, but the beer lobby is said to be gaining influence fast in Congress.

That may be good news for beer wholesalers, but it's a bitter brew indeed for retailers and customers who may soon pay higher prices for the golden fluid.

The National Beer Wholesalers Association, long a relatively obscure lobbying group in Washington, is campaigning for a nifty little law designed to guarantee distributors a territorial monopoly on their own brands.

The lobby's Malt Beverage Interbrand Competition Act would prohibit the practice of transshipping—wherein big distributors of a certain brand invade the territory of a smaller wholesaler and skim off the best business by offering lower prices. In short, the bill would allow exclusive territories for sales.

Appropriately enough, the bill has been sent to the House Judiciary subcommittee on monopolies. Congressmen who support the bill, like Rep. Jack Brooks of Texas, say their purpose is to protect the smaller distributors from "predatory practices of large distributors."

The trouble is, the bill is out-and-out anti-competitive and everyone—including the U.S. Justice Department, which also opposes the bill—knows it. By keeping competitors at bay, artificial factors and not the marketplace determine the price. That can lead to price collusion as well as higher prices.

No doubt the practice of transshipping has meant hard times for some distributors, but business is full of risks. George R. Green, a spokesman for the Food Marketing Institute, says transshipping "sounds sinister, but in any other business that would be called competition."

Perhaps a better way to deal with problems stemming from transshipping is restraint within the industry itself. In the past two decades, the number of major beer manufacturer has dwindled and today just two of them—Miller and Anheuser-Busch—account for half the market. With so few manufacturers, could industry-wide cooperation be that difficult to achieve?

But whether the industry will police itself remains to be seen. The wholesalers are pushing hard for their bill and backing their pitch up with lucrative campaign donations. The beer lobby has created a political action committee—predictably enough, the committee is called SIXPAC—to pour beer money for the right candidates.

So there's at least a chance the bill will pass, and the industry has recent legislative history on its side. Three years ago, Congress granted much the same sort of concession to soft drink bottlers.

That's not enough to make this bill right. But it's enough to give this bill at least a chance. And that's enough to make you cry in your beer.

[From the Desert News, Salt Lake City, UT, Sept. 25, 1982]

KILL THE BEER BARON BILL

Beer drinkers, watch out. Congress is preparing some nasty news for you in the form of a little-noticed bill that just might be enacted before the lawmakers adjourn.

Officially, it's called the *Malt Beverage Interbrand Competition* Act. But its unofficial name—the Beer Baron Bill—is more descriptive and more telling.

This bill would give the beer industry a lucrative exemption from the anti-trust laws. In this case, what's lucrative for that industry means more money out of the pockets of beer drinkers.

But that doesn't seem to bother the measure's 230 sponsors in the House of Representatives and 44 sponsors in the Senate.

What's important, of course, is not higher prices for a non-esential and harmful commodity but the violation of the principle involved in providing a sweeping exemption from the anti-trust laws. Unlike a few such exemptions, this one serves no useful purpose and impairs the public interest.

Specifically, the bill would permit a brewer to sign a monopolist agreement giving a favored distributor the exclusive right to sell that particular brand in a given territory.

Under such an arrangement, there could still be keen competition between wholesalers handling different brands. But, as the Washington Post notes, price competition would be dampened because retailers in a particular territory would have to pay the price charged by the single distributor of a given brand. In other words, there would be less competition at the wholesale level. That's why the U.S. Department of Justice opposes the bill.

The main argument for this measure is that a similar arrangement has long been in effect in the soft drink industry and was recently approved by Congress.

Just because one industry stifles competition, however, that is not sufficient reason for making the same mistake in another line of business.

If Congress goes along with the Beer Baron Bill, President Reagan should veto it."

[From the Wall Street Journal, Feb. 22, 1984]

A BEER BILL TO MUG CONSUMERS

(By Charles E. Schumer)

Brewers and beer wholesalers are now promoting a blatant piece of special-interest legislation aimed at giving beer wholesalers protection from competition. The beer industry is seeking a special exemption from the antitrust laws so that brewers can grant wholesalers exclusive distribution territories without fear of legal challenge. The result, as is usually the case with legislation of this sort, would be higher prices for consumers.

The bill is euphemistically titled the Malt Beverage Interbrand Competition Act. New York State Attorney General Robert Abrams, testifying against the bill, said, "the merits aside, the bill should be rejected because its very name amounts to a fraudulent misrepresentation by implying that it would foster rather than discourage competition." A more accurate title would be the Beer Monoply Act because exclusive territories are really just monopolies. With these monopolies, every liquor store operator, grocer or tavern owner would be forced to go to the one authorized distributor for a given brand in the territory.

Supporters of the legislation, which is now before the House Judiciary Committee on which I serve, make several arguments in favor of the legislation. First, they argue that exclusive territories are necessary to ensure product freshness. However, because beer has a shelf life of three to four months, beer wholesalers have a hard time explaining why they need exclusive territories when distributors of truly perishable products such as milk, fresh orange juice, meat, bread and produce don't have similar protections. If stale beer is indeed a problem, a better solution is clear labeling of expiration dates similar to what we see on milk and bread.

Second, some beer wholesalers argue that they need protection because "transhippers" (distributors who move across primary areas of responsibility) are stealing their business. But these transhippers are simply competing businesspeople who are trying to win new customers! I always understood this to be what competition is about. Beer wholesalers apparently are uncomfortable about the uncertainty that accompanies a competitive marketplace.

Third, they argue that the bill is neessary to clarify the scope of the 21st Amendment. Under several recent court decisions, federal antitrust laws have been held not pre-empted by the 21st Amendment, which has otherwise been interpreted as granting the states broad authority to regulate the sale of alcoholic beverages. However, even if the Supreme Court sustains this position, the bill does not appear to change the rule established in Continental T.V. Inc. vs. GTE Sylvania Inc. that non-price vertical restraints (which include exclusive territorial arrangements) are neither automatically legal nor illegal. The real reason beer distributors want Congress to enact this bill is to pressure states that have not yet decided the issue to permit exclusive territorial arrangements. They will argue that Congress must want these states to approve such arrangements if it passes a law, however, redundant, that declares them not to be per se illegal.

Finally, supporters argue that the existing law isn't adequate to protect against frivolous, and costly, lawsuits. We are a litigous society, but the risk of litigation is one all businesspeople face. The beer industry is no different from any other in this regard and it certainly has not shown why it needs special treatment.

Interestingly, the risk of litigation has not prevented the two giant brewers, Anheuser-Busch and Miller Brewing (subsidiary of Philip Morris), which control over 50% of all beer sales, from instituting territorial monopolies this past year. As a result, according to the New York City Department of Consumer Affairs, prices of those brands of beer have gone up 30% in the first 10 months of 1983, while soft-drink prices have gone up only 4%. This striking disparity is confirmed by research in New Jersey and Indiana showing, not surprisingly, that beer monopolies mean higher prices to consumers.

Even the Justice Department and the Federal Trade Commission, which recently have not looked unkindly at vertical restraints imposed on distributors by manufacturers, oppose the bill. Justice says that the chances of anti-competitive consequences in the beer industry are "uniquely high." The FTC told the Judiciary Committee that it is "unaware of any evidence or principled argument that might justify the bill."

This is not the first time the beer industry has sought this kind of protection. Similar legislation failed to move through either the Senate or House Judiciary Committees in the 97th Congress. Typically, however, it is the state legislatures that are asked to endorse these monopolies. When I served in Albany, the beer wholesalers proposed that exclusive territories be mandated by law. [The New York Attorney General has now proposed that they be prohibited.] Back then, however, the brewers opposed that legislation calling it "special interest favoritism, granting wholesalers a perpetual hold on the distribution of products and foreclosing by legislation any competition . . . [It] would inevitably precipitate a price rise." Miller Brewing said that in 1976 and it was right.

In 1979, the President's Commission for Review of Antitrust Laws and Procedures concluded that exemptions from the national policy of free-market competition should only be made upon compelling evidence of the unworkability of competition or a clearly paramount social purpose. The beer industry has not made this showing. Indeed, it is beer drinkers, not beer brewers or beer wholesalers, who need protection.

INDIANA'S DEBATE ON EXCLUSIVE TERRITORIES

'Beer Baron' Not In Public Interest

Herald Telephone
Bloomington, IN
February 14, 1985

The bottom line question is whether free enterprise competitive pricing ..is in the public interest, or is the public interest advanced by monopolies granted to special interests for the purpose of extracting higher prices from consumers?

The proposed 'Beer Baron' legislation is not in the public interest. Support the free enterprise system - reject the special interest 'Beer Baron' proposal.

George F. Zahrt
Chairman of the Board
Tippecanoe Beverages, Inc.

Distributors Look For Rule's Repeal

Pilot-News
Plymouth, IN
January 12, 1985

Greenlee and Flagg (beer wholesalers) are also not very pleased with reports from those who oppose lifting the ban (Rule 28's ban on exclusive territories) that beer prices per case will increase anywhere from $2 to $4.

'No way will it come close to a $4 increase. It will be more like $1 or $1.50 price increase from the brewery,' Greenlee said.

Beer Bill No Good

Pharos-Tribune
Logansport, IN
February 11, 1985

When this bill passes, the price of beer will go up-up-up. And since beer drinkers will drink the stuff regardless of all obstacles, this means one fine profit for a very small group of men.

Keith K. Michael

Local Owner Disapproves Of Proposed Bill

Citizen
Linton, IN
February 13, 1985

Beer wholesalers favor this 'Beer Baron Bill' as it would eliminate competition in their marketing territories from all other beer wholesalers. Retailers would have one supplier of each brand and would not be allowed to purchase from any other.

Free enterprise would be lost in the beer distribution industry, small wholesalers would never have the chance to become larger. All incentive to keep prices low and to operate efficient distribution centers would be lost.

Many businesses in this country succeed and fail daily without seeking or receiving congressional attention. Much of the food industry is watching the actions on controlled territories for beer wholesalers. They are watching to see what precedent is set.

Mike Shonk
Linton Red & White

Small Stores Object To 'Beer Baron' Bill

Times
Hammond, IN
February 10, 1985

The 'beer baron' bill could push small independent package liquor stores out of business, owners told four Region legislators Saturday.

Owners said without the opportunity to shop around, they can't stay competitive with the chains, who can use liquor as a 'loss leader' to get customers into the store.

Over A Barrel

Tribune
Kokomo, In
February 10, 1985

"If this legislation passes.... retailers will have no choice as to our supplier of each brand of beer. We will be required to deal with the designated distributor no matter how high the price and how unsatisfactory the service.'

Beer Baron Bill Opposed

News-Gazette
Winchester, IN
February 14, 1985

Democratic Reps. Stan Jones, of West Lafayette, and Marilyn Schultz, of Bloomington, said Wednesday...."The legislation is designed to enrich distributors to the detriment of consumers.'

Beer Distributing Different From Soft Drinks

Journal and Courier
Lafayette, IN
February 13, 1985

It is true that Coke, Pepsi and Seven-Up have exclusive territories.. ..[R]etailers can go outside these territories and bring in Coke, Pepsi, or Seven-Up at a cost savings of over $2 per case; but retailers are not permitted to haul beer under current law....The people of Indiana should not be required to support distributors in exclusive territories that are inefficient and poorly managed.

Howard D. Hensley
President, Bar Barry
Liquors, Inc.

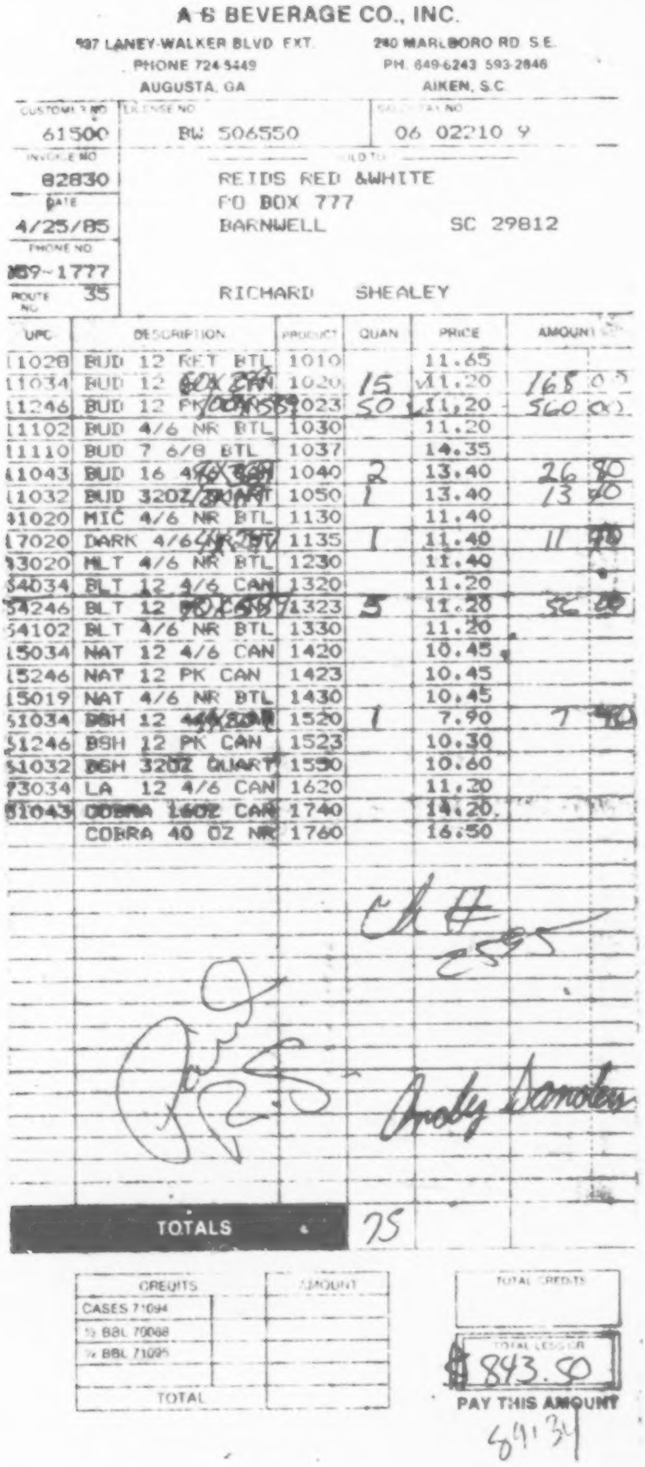
News-Sentinel
Fort Wayne, IN
January 22, 1985

Mr. Boylston. Since our time is limited, we want to share with you some personal, real-life examples that show how exclusive territories are anticompetitive, and therefore why the committee should not act favorably on S. 412.

Competition between wholesalers means that I can be competitive with my competition. I want to submit some copies of invoices for the record of the specific examples that I am going to mention, plus some other beer and soft drink prices that show the variances across my State of South Carolina and how I would love to be able to capitalize on some of the better bargains in other areas, should I be able to do it.

Senator DeConcini. Without objection, they will appear in the record.

[The following were received for the record:]



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CUSTOMER NO 61500	LICENSE NO BW 506550	SALES TAX NO 06 02210 9

INVOICE NO 82830
DATE 4/25/85
PHONE NO [illegible]59-1777
ROUTE NO 35

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REIDS RED &WHITE
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BARNWELL SC 29812

RICHARD SHEALEY

UPC	DESCRIPTION	PRODUCT	QUAN	PRICE	AMOUNT
11028	BUD 12 RET BTL	1010		11.65	
11034	BUD 12 [illegible] CAN	1020	15	11.20	168 00
11246	BUD 12 PK [illegible]	1023	50	11.20	560 00
11102	BUD 4/6 NR BTL	1030		11.20	
11110	BUD 7 6/8 BTL	1037		14.35	
11043	BUD 16 [illegible]	1040	2	13.40	26 80
11032	BUD 32OZ/QUART	1050	1	13.40	13 40
41020	MIC 4/6 NR BTL	1130		11.40	
17020	DARK 4/6 NR BTL	1135	1	11.40	11 40
33020	MLT 4/6 NR BTL	1230		11.40	
54034	BLT 12 4/6 CAN	1320		11.20	
54246	BLT 12 [illegible]	1323	5	11.20	56 00
54102	BLT 4/6 NR BTL	1330		11.20	
15034	NAT 12 4/6 CAN	1420		10.45	
15246	NAT 12 PK CAN	1423		10.45	
15019	NAT 4/6 NR BTL	1430		10.45	
51034	BSH 12 [illegible]	1520	1	7.90	7 90
51246	BSH 12 PK CAN	1523		10.30	
51032	BSH 32OZ QUART	1550		10.60	
73034	LA 12 4/6 CAN	1620		11.20	
81043	COBRA 16OZ CAN	1740		14.20	
	COBRA 40 OZ NR	1760		16.50	
TOTALS			75		

Ch # 2585

Andy Sanders

CREDITS		AMOUNT
CASES 71094		
½ BBL 70068		
¼ BBL 71095		
TOTAL		

TOTAL CREDITS

TOTAL LESS CR
$843.50
PAY THIS AMOUNT

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18200		BUDWEISER					
11102	11 02	4/6/12 NR	11.25	1	11	25	345
11028	11 28	24/12 RT	11.70				
11032	11 32	12/32 NR	13.30				
11034	11 34	4/6/12 CN	11.25	5	56	25	345
11043	11 43	4/6/16 CN	13.30				
11110	11 53	48\7 OZ NR	14.20				
11246	11 66	2/12 CN	11.25	6	67	50	655
11168	11 68	24\12 TT SUITCA	11.25				
18200		NATURAL LIGHT					
15019	15 19	4/6/12NR	10.50	1	10	50	325
15028	15 28	24/12 RT	10.60				
15034	15 34	4/6/12 CN	10.50	3	31	50	325
15043	15 43	4/6/16 CN	11.30				
15246	15 66	2/12 CN	10.50				
18200		MICHELOB CLASSI					
17020	17 20	4/6 12 NR	12.25				
18200		MICHELOB					
41020	41 20	4/6 12 NR	12.25	1	12	25	375
41034	41 34	4/6/12 CN	12.25				
18200		MICHELOB LIGHT					
43020	43 20	4/6 12 NR	12.25	1	12	25	375
43034	43 34	4/6/12 CN	12.25				
18200		KING COBRA					
51222	51 22	12/40 OZ MALT L	[illegible]				
51043	51 43	4/6/16 CN	14.00				
18200		BUD - LIGHT					
54102	54 02	4/6/12 NR	11.25				
54028	54 28	24/12 RT	11.70				
54034	54 34	4/6/12 CN	11.25				
54110	54 53	48\7 OZ NR	14.20				
54246	54 66	2/12 CN	11.25	[illegible]	22	50	655
18200		BUSCH					
61032	61 32	12/32 NR	12.30				
61034	61 34	4/6/12 CN	10.30				
61246	61 66	2/12 CN	10.30				
18200		L.A. BEER					
73034	73 34	4/6/12 CN	11.25				
73246	73 66	2/12 CN	11.25				

[redacted]

PAID

DATE

QTY.	CREDITS	VALUE	AMOUNT				
	EMPTY RETURNABLE BOTTLES			TOTAL CHARGES	224	00	
	EMPTY ½ BBL.			LESS PROMO	1	60	
	EMPTY ¼ BBL.			LESS CREDIT			
1	Mich NR	80					
1	Mich L NR	80		NET TOTAL	222	40	

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CUST #	LICENSE #	BILL TO #	SEQ #	INVOICE #	DATE
22888				13355	5/8/85

SOLD TO [redacted]

9344

UPC #	RETAIL	DESCRIPTION	PROD #	QUAN	PRICE	AMOUNT
11 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
11102		BUD NR 4/6 24/12OZ	00051		11.25	
11 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
11 1		BUD NR 6/8 48/07OZ	13617		13.40	
11032		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
11 0		BUD CTT4/6 24/12OZ	00108		11.25	
11 1		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
11246		BUD CT2/12 24/12OZ	00256	900	~~11.65~~ 9.50	8550.00
54 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
54102		BUDLT NR 4/6 24/12OZ	00272		11.25	
54 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
54 0		BUDLT CT2/12 24/12OZ	00299	100	~~11.65~~ 9.50	950.00
61 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
61 0		BUSCH CT2/12 24/12OZ	00388		9.00	
41054		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
41 1		MICH NR 4/6 24/12OZ	00167		12.35	
41 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
41246		MICH CT2/12 24/12OZ	00345		12.15	
43 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
43 0		MICHLT CTT4/6 24/12OZ	13935		12.35	
43246		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
17020		MICHCD NR 4/6 24/12OZ	00671		12.35	
15 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
15 0		NATRLT CTT4/6 24/12OZ	11959		9.00	
15 1		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
73028		LA RT-BOT 24/12OZ	00663		11.85	
73 0		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
51043		KCOBRA CTT4/6 24/16OZ	00701		13.75	
51222		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
00031		HEIN NR-BTL 24/12OZ	00337		17.00	
00021		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
00011		HEIN CTT4/6 24/12OZ	16276		17.00	
00012		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
10111		AMSTEL NR 4/6 24/12OZ	00507		17.00	
[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

RECEIVED BY Paid #9344

				SUB TOTAL	
	CREDIT FOR EMPTIES 01/CASE	00981		1.20	

TOTAL → $9,500.00

PLEASE CHECK THIS INVOICE CAREFULLY. CLAIMS FOR BREAKAGE AND SHORTAGES MUST BE MADE AT TIME OF DELIVERY. RETURNED CHECKS WILL INCUR A $10.00 SERVICE CHARGE

Thank You WE APPRECIATE YOUR BUSINESS

	[illegible]		[illegible]	
[illegible] Apple Juice 3 x 32	635	65	921	97
Delmonte Pineapple 15 oz	1449	75	14.38	75
[illegible] Sliced Peaches 21 oz	20.11	95	1978	75
[illegible] Crystals Sugar 5 lb	1835	173	1922	167
Tide Detergent 49 oz	3070	22	3087	22
[illegible] Peanut Butter 18 oz	1267	137	14.07	146
[illegible] 3 lb	817	43	944	2195

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 CHARLESTON      CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE          (KB2)     DATE 04/12/85          PAGE     27  1535

T  ITEM                                                       C                            DATE     A L  AVG   DSD    S  TEMP-PRICE
W  CODE        UPC       PACK  SIZE     DESCRIPTION         GL G  COST     SRP   CS GIG ZN LAST CHG I F MVMT  VENDOR T DLT DT

                                   COMMODITY CLASS - 018  RICE, DRY
018-0142 0-50700-03407 006 10 LB R&W LONG GRAIN RICE     10    17.67       349   16 3 02/08/85        3
018-0144 0-50700-00409 003 20 LB R&W LONG GRAIN RICE     10    17.48       699   17 3 02/08/85
018-0155 0-00000-00000 030  1 LB TOHOCO LONG GR RICE     10     9.20        39   21 3          N
018-0165 0-00000-00000 030  2 LB TOHOCO LONG GR RICE     10    17.94        79   24 3          N
018-0170 0-00000-00000 020  3 LB TOHOCO LONG GR RICE     10    17.77       103   14 3          N
018-0175 0-00000-00000 012  5 LB TOHOCO LONG GR RICE     10    17.69       159    7 3          N
018-0180 0-00000-00000 006 10 LB TOHOCO LONG GR RICE     10    17.66       349   16 3          N
018-0185 0-00000-00000 003 20 LB TOHOCO LONG GR RICE     10    17.47       705   17 3          N
018-0225 0-54800-02001 024  6 OZ UNCLE BEN WILD RICE MIX 10    26.82       149   25 3          N
018-0226 0-54800-02011 012 6 1/4 UNC BEN INST WILD RICE  10    13.41       149   25 3 11/16/84
018-0230 0-54800-01008 018 32 OZ UNCLE BEN CONVERTD RICE 10    27.56       189   19 3 02/08/85        4
018-0235 0-54800-01009 012 48 OZ UNCLE BENS RICE         10    25.76       265   15 3 02/08/85
018-0246 0-54800-01007 006 5 LB  UNCLE BENS RICE         10    18.67       379   18 3 12/15/83        2
018-0248 0-54800-01024 006 10 LB UNCLE BENS RICE         10    33.34       695   20 3 11/01/84        1
018-0250 0-54800-01101 001 25 LB UNCLE BENS RICE         10    12.29      1595   23 3          N
018-0256 0-17400-10932 012  5 LB MAHATMA LONG GRAIN RICE 10    20.83       223   22 3 02/08/85        2
018-0257 0-17400-10505 024  5 OZ MAHATMA YELLOW RICE     10     5.66        29   19 3 02/08/85        7
018-0258 0-17400-11066 006 10 LB MAHATMA LONG GRAIN RICE 10    20.53       389   12 3          N
018-0259 0-17400-11130 003   20# MAHATMA RICE            10    19.55       749   13 3          N
018-0260 0-43000-22040 024  7 OZ MINUTE RICE             10    16.92        89   21 3 02/08/85        5
018-0270 0-43000-22080 024 14 OZ MINUTE RICE             10    26.66       135   18 3 02/08/85        3
018-0275 0-13000-22095 018 28 OZ MINUTE RICE             10    31.29       215   19 3 02/08/85        3
018-0286 0-35200-05515 012  5 LB RICELAND LONG GR RICE   10    20.77       199   13 3          N
018-0287 0-35200-05517 006 10 LB RICELAND RICE           10    20.59       389   12 3          N
018-0288 0-35200-05584 001 50 LB RICELAND EX LONG GRAIN  10    10.75      1125    4 3 02/08/85        4
018-0292 0-35200-06522 012  5 LB RICELAND PLUMP TND RICE 10    19.61       189   14 3          N
018-0293 0-35200-06524 006 10 LB RICELAND RC PLUMP TENDR 10    19.42       369   12 3          N
018-0294 0-35200-05681 017 3-1/2 RICELAND RICE BONUS PK  10    16.03        89  19- 3 02/08/85   N
018-0298 0-35200-05503 012 1  LB RICELAND LG NAT BROWN   10     5.07        59   28 3            N
018-0300 0-35200-05518 003 20 LB RICELAND EX LONG GRAIN  10    20.34       659   3- 3          N
018-0301 0-35200-00664 003 20 LB RICELAND RICE PTG       10    19.29       593   6- 3          N
018-0303 0-35200-06609 001 50 LB RICELAND RICE P T G     10    10.25      1049    2 3          N
018-0305 0-35200-06521 020  3 LB RICELAND RICE P T G     10    19.78        89  11- 3          N
018-0320 0-17400-10820 020  3 LB WATERMAID RICE          10    19.40        99    2 3          N
018-0322 0-17400-10950 012  5 LB WATERMAID RICE          10    18.60       179   13 3          N
018-0324 0-17400-11069 006 10 LB WATERMAID RICE          10    18.30       359   15 3 03/29/85        1
                                           TEMPORARY SRP              3.19  EXPIRATION DATE 05/23/85
018-0326 0-17400-11135 003 20 LB WATERMAID RICE          10    18.00       599      3          N
018-0332 0-17400-10077 012 14 OZ SUCCESS RICE            10    13.21       129   15 3 02/08/85        3
018-0380 0-15300-43028 024  6 OZ RICE A RONI BEEF        10    15.28        89   28 3 02/08/85       11
018-0390 0-15300-43023 024  8 OZ RICE A RONI CHICKEN     10    15.28        89   28 3 02/08/85       17
018-0391 0-15300-43049 024 6.5 Z RICE A RONI FRIED       10    15.28        89   28 3
018-0425 0-15300-43053 012 7 1/2 SPANISH RICE RONI 728   10     7.64        89   28 3 09/06/84        4
018-0450 0-41000-02267 012   1'S LIPTON BEEF RICE & SCE  10     7.81        93   30 3 12/28/84        4
018-0452 0-41000-02266 012   1'S LIPTON CHICKEN RICE SCE 10     7.81        93   30 3 12/28/84        4
018-0480 0-17400-10882 020  3 LB EMPEROR POLY RICE       10    16.48        99   17 3          N
018-0490 0-35200-05532 020 3- LB PERFECTION L-GRAIN RICE 10    15.50        79    2 3          N

                                   COMMODITY CLASS - 019  JUICES & DRINKS
019-0445 0-14000-00952 009  3 PK BOR SIPPIN PAK-ORG JUC  10     8.28       115   20 3          N
019-0449 0-14000-02223 009  3 PK BOR SIPPIN PAK-APPLE JC 10     8.28       115   20 3          N
019-0450 0-14000-02226 006  3 PK BOR SIPPIN PAK-GRAPE    10     8.28       115   20 3          N
019-3100 0-50700-00055 012 32 OZ R&W APPLE JUICE         10     6.38        65   18 3 02/08/85        2
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  CHARLESTON       CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE           (KB2)     DATE 04/12/85             PAGE      28  1536

T  ITEM                                                        C                            DATE     A L AVG   DSD    S TEMP-PRICE
W  CODE        UPC     PACK   SIZE         DESCRIPTION      GL G COST       SRP   CS GIG ZN LAST CHG I F MVMT  VENDOR T DLT DT


                                            COMMODITY CLASS - 019  JUICES & DRINKS
 019-3107 0-50700-00057 006  64 OZ R & W APPLE JUICE        10     5.91       113    13 3 02/08/85          6
 019-3110 0-14800-00031 048   5 OZ MOTTS APPLE JUICE        10    11.25     6/169    17 3            N
 019-3115 0-14800-00036 012  40 OZ MOTTS APPLE JUICE        10    13.05       125    13 3 02/08/85
 019-3116 0-14800-31433 012  40 OZ MOTT NATURAL APPLE JCE   10    13.05       139    22 3 02/28/85
                                                      TEMPORARY SRP          1.09   EXPIRATION DATE 05/02/85
 019-3117 0-14800-31987 009   3 PK MOTT'S APP GRAPE BRPACK  10     8.37       119    22 3            N
 019-3120 0-14800-00034 006  64 OZ MOTTS APPLE JUICE        10    10.29       205    16 3            N
 019-3130 0-14800-00032 012  32 OZ MOTTS APPLE JUICE        10    10.59       105    16 3            N
 019-3132 0-14800-31979 009   3 PK MOTTS AP CRAN BRKPAK     10     8.37       119    22 3            N
 019-3133 0-14800-31656 006  64 OZ MOTTS APPLE JUICE        10    10.29       205    16 3            N
 019-3202 0-21000-66239 006  44 OZ KRAFT APPLE JUICE        10     8.29       129    19 3 03/29/85          2
                                                      TEMPORARY SRP          1.19   EXPIRATION DATE 04/18/85
 019-3205 0-46000-13318 012  32 OZ MUSSELMAN APPLE JUICE    10     9.98        99    16 3 03/22/85
 019-3210 0-37323-13324 012  46 OZ MUSSELMAN APPLE JUICE    10    13.12       125    13 3            N
 019-3214 0-46000-13305 048  8-6PK MUSSELMAN APPLE JUICE    10    11.31     6/175    19 3            N
 019-3217 0-37323-13314 006  1/2GL MUSSELMAN APPLE JUICE    10     9.71       199    19 3 02/08/85
 019-3220 0-37323-13315 004  1 GAL MUSSELMAN APPLE JUICE    10    12.11       413    27 3            N
 019-3235 0-37100-00314 012  46 OZ SENECA APPLE JUICE TIN   10    11.95       119    16 3 02/08/85         13
 019-3240 0-37100-00342 012  32 OZ SENECA APPLE JUICE       10     8.95        95    21 3 02/28/85          2
 019-3242 0-37100-00345 008  46 OZ SENECA APPLE JUICE       10     8.85       133    17 3 02/08/85          3
 019-3244 0-37100-00348 006  64 OZ SENECA APPLE JUICE GLS   10     8.75       169    14 3 02/28/85          2
 019-3258 0-37100-00385 008  48 OZ SENECA GRAPE JUICE       10    11.76       183    20 3            N
 019-3264 0-37100-00390 012  32 OZ SENECA LEMON JUICE       10    12.20       119    15 3 04/12/85      N   2
                                                      TEMPORARY SRP            99   EXPIRATION DATE 06/13/85
 019-3309 0-43600-00030 048  8-6PK WHITE HSE APPLE JC 5.5Z  10    10.69     6/165    18 3 02/08/85         10
 019-3355 0-43600-00410 012  32 OZ WHITE HOUSE APPLE JUICE  10     9.67        95    15 3 02/08/85          2
 019-3357 0-43600-00401 012  46 OZ WHT HSE APPLE JUCE CAN   10    12.24       119    14 3 02/08/85         10
 019-3367 0-43600-00403 006  46 OZ WHITE HOUSE APPLE JUICE  10     7.19       145    17 3 04/12/85          2
 019-3370 0-43600-00412 006  1/2GL WHITE HOUSE APPLE JUICE  10     9.39       189    17 3
 019-3376 0-43600-00092 012  32 OZ W.H. APPLE CRANBERY JCE  10    10.92       109    17 3            N
 019-3380 0-43600-00091 012  32 OZ WHITE HOUSE APPLE-CHERY  10    10.37       105    18 3 03/14/85
 019-3381 0-43600-00070 006  64 OZ WHT HSE APPLE CHERRY JC  10    10.14       229    26 3            N
 019-3382 0-43600-00131 004  E PK  WHITE HOUSE APPLE JC 7Z  10     7.10       213    17 3 02/08/85          1
 019-3390 0-43600-00415 006  64 OZ WH NAT PLUS APPLE JUICE  10     9.39       189    17 3 03/08/85          1
 019-3392 0-43600-00421 006  64 OZ WHT HSE SWEET CIDER      10     9.39       189    17 3            N
 019-3394 0-43600-00422 004  128OZ WHT HSE SWEET CIDER      10    11.79       345    15 3            N
 019-3429 0-78538-12701 008  48 OZ CAROLINA GOLD APPLE JCE  10     6.21        89    13 3 02/14/85
 019-3460 0-43600-00420 012  32 OZ WHITE HOUSE APPLE CIDER  10     9.67        95    15 3 02/08/85          1
 019-3485 0-41610-00001 012  32 OZ SHENANDOAH APPLE JUICE   10     8.70        85    15 3 02/08/85
 019-3488 0-41610-00012 012  46 OZ SHENANDOAH APPLE JUICE   10    12.02       115    13 3 02/08/85
 019-3490 0-41610-10000 008   6 PK SHENANDOAH APPLE JUICE   10    10.90       159    14 3 02/08/85
 019-3492 0-41610-00028 006  64 OZ SHENANDOAH APPLE JUICE   10     8.66       169    15 3 02/08/85
 019-3506 0-39000-00502 024    211 LIBBY APRICOT NECTAR     10     9.66        57    29 3            N
 019-3530 0-24000-01016 024  12 OZ DM APRICOT NECTAR        10     9.89        55    25 3
 019-3590 0-52000-03927 024  12 OZ GATORADE LEMON-LIME  SC  10     9.13        45    15 3            N
 019-3650 0-53000-15108 024   8 OZ REALEMON LEMON JUICE     10    13.68        69    17 3 02/08/85          4
 019-3655 0-53000-15116 024  16 OZ REALEMON LEMON JUICE     10    19.82       105    21 3 02/08/85          5
 019-3665 0-53000-15135 012  32 OZ REALEMON LEMON JUICE     10    15.56       155    16 3 02/14/85          1
                                                      TEMPORARY SRP          1.40   EXPIRATION DATE 04/25/85
 019-3671 0-53000-15154 024  4.5OZ REALEMON LEMON PLASTIC   10     6.99      2/79    26 3 12/29/83          2
 019-3680 0-53000-15454 024  4.5OZ REALIME LIME PLASTIC     10     7.49      2/85    27 3            N
 019-3682 0-53000-15452 024  2.5OZ REALTIME LIME PLASTIC    10     4.94      2/59    30 3            N
 019-3700 0-53000-15407 012   8 OZ REALIME LIME JUICE       10     7.71        89    28 3            N
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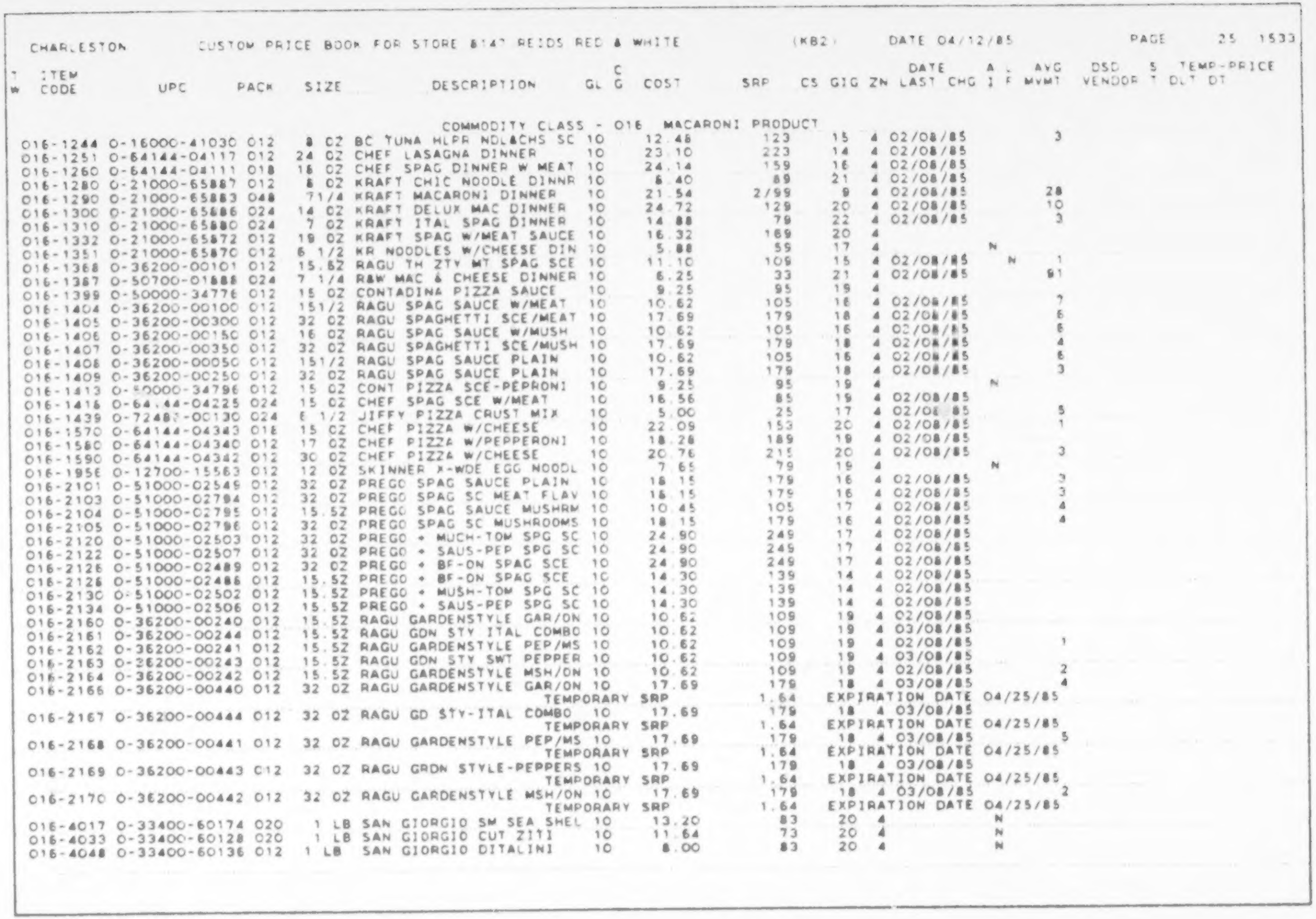
FORM WBL20P



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CHARLESTON        CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE          (KB2)     DATE 04/12/85            PAGE      25  1533

                                                            C                              DATE       A L  AVG   DSD   S  TEMP-PRICE
T  ITEM
W  CODE      UPC       PACK SIZE      DESCRIPTION        GL G  COST         SRP CS GIG ZN LAST CHG    I F MVMT  VENDOR T DLT DT

                                        COMMODITY CLASS - 016  MACARONI PRODUCT
016-1244 0-16000-41030 012  8 OZ BC TUNA HLPR NDL&CHS SC 10    12.48        123      15  4 02/08/85          3
016-1251 0-64144-04117 012 24 OZ CHEF LASAGNA DINNER     10    23.10        223      14  4 02/08/85
016-1260 0-64144-04111 018 16 OZ CHEF SPAG DINNER W MEAT 10    24.14        159      16  4 02/08/85
016-1280 0-21000-65887 012  8 OZ KRAFT CHIC NOODLE DINNR 10     6.40         89      21  4 02/08/85
016-1290 0-21000-65883 048  71/4 KRAFT MACARONI DINNER   10    21.54       2/99       9  4 02/08/85         28
016-1300 0-21000-65886 024 14 OZ KRAFT DELUX MAC DINNER  10    24.72        129      20  4 02/08/85         10
016-1310 0-21000-65880 024  7 OZ KRAFT ITAL SPAG DINNER  10    14.88         79      22  4 02/08/85          3
016-1332 0-21000-65872 012 19 OZ KRAFT SPAG W/MEAT SAUCE 10    16.32        189      20  4
016-1351 0-21000-65870 012 6 1/2 KR NOODLES W/CHEESE DIN 10     5.88         55      17  4            N
016-1368 0-36200-00101 012 15.6Z RAGU TH ZTY MT SPAG SCE 10    11.10        109      15  4 02/08/85     N    1
016-1387 0-50700-01888 024 7 1/4 R&W MAC & CHEESE DINNER 10     6.25         33      21  4 02/08/85         81
016-1399 0-50000-34776 012 15 OZ CONTADINA PIZZA SAUCE   10     9.25         95      19  4
016-1404 0-36200-00100 012 151/2 RAGU SPAG SAUCE W/MEAT  10    10.62        105      16  4 02/08/85          7
016-1405 0-36200-00300 012 32 OZ RAGU SPAGHETTI SCE/MEAT 10    17.69        179      18  4 02/08/85          6
016-1406 0-36200-00150 012 16 OZ RAGU SPAG SAUCE W/MUSH  10    10.62        105      16  4 02/08/85          6
016-1407 0-36200-00350 012 32 OZ RAGU SPAGHETTI SCE/MUSH 10    17.69        179      18  4 02/08/85          4
016-1408 0-36200-00050 012 151/2 RAGU SPAG SAUCE PLAIN   10    10.62        105      16  4 02/08/85          6
016-1409 0-36200-00250 012 32 OZ RAGU SPAG SAUCE PLAIN   10    17.69        179      18  4 02/08/85          3
016-1413 0-50000-34796 012 15 OZ CONT PIZZA SCE-PEPRONI  10     9.25         95      19  4            N
016-1416 0-64144-04225 024 15 OZ CHEF SPAG SCE W/MEAT    10    16.56         85      19  4 02/08/85
016-1439 0-72482-00130 024 6 1/2 JIFFY PIZZA CRUST MIX   10     5.00         25      17  4 02/08/85          5
016-1570 0-64144-04343 018 15 OZ CHEF PIZZA W/CHEESE     10    22.09        153      20  4 02/08/85          1
016-1580 0-64144-04340 012 17 OZ CHEF PIZZA W/PEPPERONI  10    18.28        189      19  4 02/08/85
016-1590 0-64144-04342 012 30 OZ CHEF PIZZA W/CHEESE     10    20.76        215      20  4 02/08/85          3
016-1956 0-12700-15563 012 12 OZ SKINNER X-WDE EGG NOODL 10     7.65         79      19  4            N
016-2101 0-51000-02549 012 32 OZ PREGO SPAG SAUCE PLAIN  10    18.15        179      16  4 02/08/85          3
016-2103 0-51000-02794 012 32 OZ PREGO SPAG SC MEAT FLAV 10    18.15        179      16  4 02/08/85          3
016-2104 0-51000-02795 012 15.5Z PREGO SPAG SAUCE MUSHRM 10    10.45        105      17  4 02/08/85          4
016-2105 0-51000-02796 012 32 OZ PREGO SPAG SC MUSHROOMS 10    18.15        179      16  4 02/08/85          4
016-2120 0-51000-02503 012 32 OZ PREGO + MUCH-TOM SPG SC 10    24.90        249      17  4 02/08/85
016-2122 0-51000-02507 012 32 OZ PREGO + SAUS-PEP SPG SC 10    24.90        249      17  4 02/08/85
016-2126 0-51000-02489 012 32 OZ PREGO + BF-ON SPAG SCE  10    24.90        249      17  4 02/08/85
016-2128 0-51000-02486 012 15.5Z PREGO + BF-ON SPAG SCE  10    14.30        139      14  4 02/08/85
016-2130 0-51000-02502 012 15.5Z PREGO + MUSH-TOM SPG SC 10    14.30        139      14  4 02/08/85
016-2134 0-51000-02506 012 15.5Z PREGO + SAUS-PEP SPG SC 10    14.30        139      14  4 02/08/85
016-2160 0-36200-00240 012 15.5Z RAGU GARDENSTYLE GAR/ON 10    10.62        109      19  4 02/08/85
016-2161 0-36200-00244 012 15.5Z RAGU GDN STY ITAL COMBO 10    10.62        109      19  4 03/08/85
016-2162 0-36200-00241 012 15.5Z RAGU GARDENSTYLE PEP/MS 10    10.62        109      19  4 02/08/85          1
016-2163 0-36200-00243 012 15.5Z RAGU GDN STY SWT PEPPER 10    10.62        109      19  4 03/08/85
016-2164 0-36200-00242 012 15.5Z RAGU GARDENSTYLE MSH/ON 10    10.62        109      19  4 02/08/85          2
016-2166 0-36200-00440 012 32 OZ RAGU GARDENSTYLE GAR/ON 10    17.69        179      18  4 03/08/85          4
                                                  TEMPORARY SRP            1.64  EXPIRATION DATE 04/25/85
016-2167 0-36200-00444 012 32 OZ RAGU GD STY-ITAL COMBO  10    17.69        179      18  4 03/08/85
                                                  TEMPORARY SRP            1.64  EXPIRATION DATE 04/25/85
016-2168 0-36200-00441 012 32 OZ RAGU GARDENSTYLE PEP/MS 10    17.69        179      18  4 03/08/85          5
                                                  TEMPORARY SRP            1.64  EXPIRATION DATE 04/25/85
016-2169 0-36200-00443 012 32 OZ RAGU GRDN STYLE-PEPPERS 10    17.69        179      18  4 03/08/85
                                                  TEMPORARY SRP            1.64  EXPIRATION DATE 04/25/85
016-2170 0-36200-00442 012 32 OZ RAGU GARDENSTYLE MSH/ON 10    17.69        179      18  4 03/08/85          2
                                                  TEMPORARY SRP            1.64  EXPIRATION DATE 04/25/85
016-4017 0-33400-60174 020  1 LB SAN GIORGIO SM SEA SHEL 10    13.20         83      20  4            N
016-4033 0-33400-60128 020  1 LB SAN GIORGIO CUT ZITI    10    11.64         73      20  4            N
016-4048 0-33400-60136 012 1 LB  SAN GIORGIO DITALINI    10     8.00         83      20  4            N
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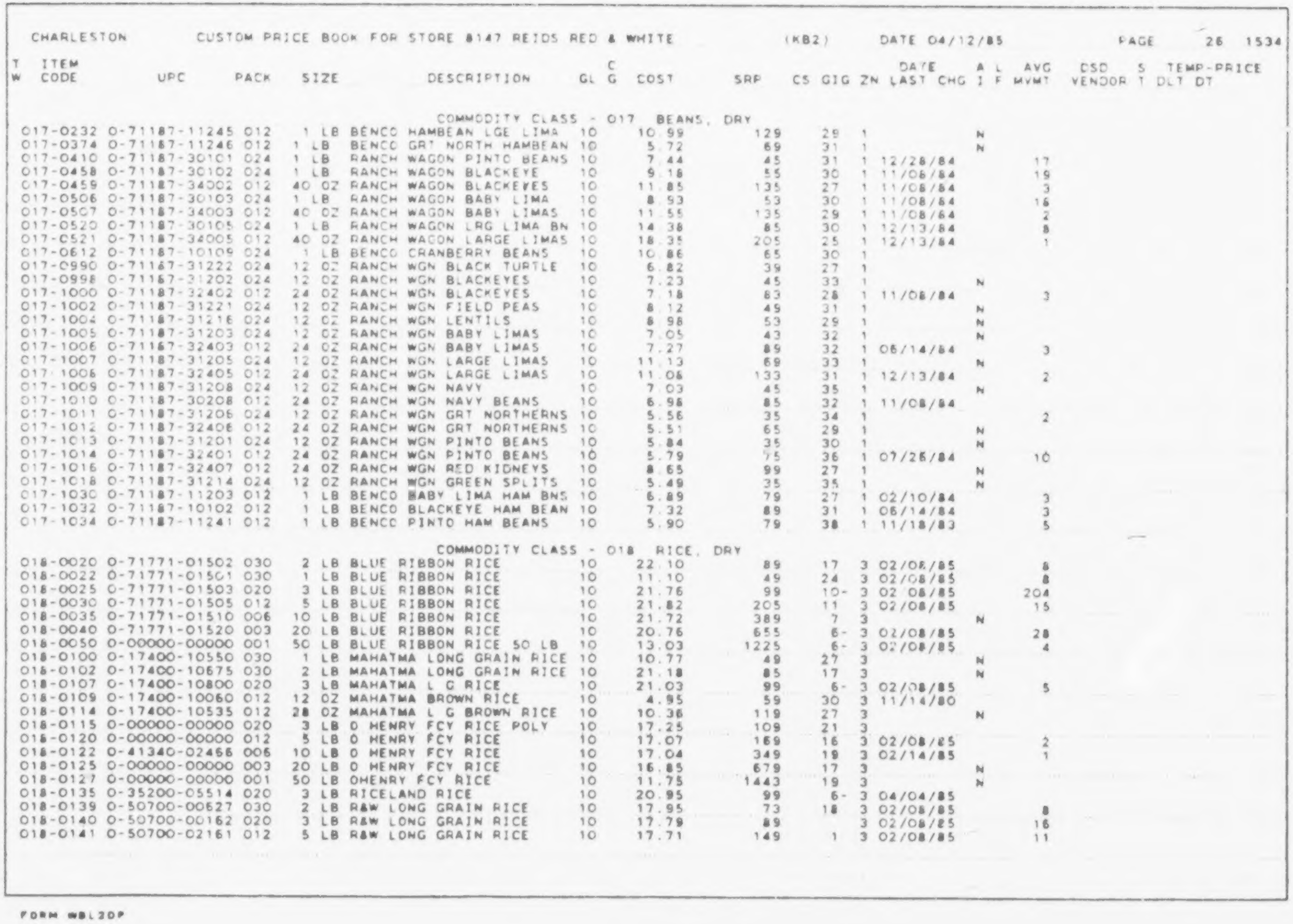

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 CHARLESTON        CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE          (KB2)      DATE 04/12/85          PAGE     26  1534

T ITEM                                                       C                                DATE    A L  AVG  DSD   S TEMP-PRICE
W CODE        UPC      PACK  SIZE      DESCRIPTION        GL G  COST         SRP  CS GIG ZN LAST CHG  I F MVMT VENDOR T DLT DT

                                            COMMODITY CLASS - 017  BEANS, DRY
 017-0232 0-71187-11245 012  1 LB BENCO HAMBEAN LGE LIMA  10     10.99        129     29  1           N
 017-0374 0-71187-11246 012 1 LB  BENCO GRT NORTH HAMBEAN 10      5.72         69     31  1           N
 017-0410 0-71187-30101 024 1 LB  RANCH WAGON PINTO BEANS 10      7.44         45     31  1 12/28/84        17
 017-0458 0-71187-30102 024 1 LB  RANCH WAGON BLACKEYE    10      9.18         55     30  1 11/06/84        19
 017-0459 0-71187-34002 012 40 OZ RANCH WAGON BLACKEYES   10     11.85        135     27  1 11/08/84         3
 017-0506 0-71187-30103 024 1 LB  RANCH WAGON BABY LIMA   10      8.93         53     30  1 11/08/84        16
 017-0507 0-71187-34003 012 40 OZ RANCH WAGON BABY LIMAS  10     11.55        135     29  1 11/08/84         2
 017-0520 0-71187-30105 024 1 LB  RANCH WAGON LRG LIMA BN 10     14.38         85     30  1 12/13/84         8
 017-0521 0-71187-34005 012 40 OZ RANCH WAGON LARGE LIMAS 10     18.35        205     25  1 12/13/84         1
 017-0612 0-71187-10109 024  1 LB BENCO CRANBERRY BEANS   10     10.86         65     30  1
 017-0990 0-71187-31222 024 12 OZ RANCH WGN BLACK TURTLE  10      6.82         39     27  1
 017-0998 0-71187-31202 024 12 OZ RANCH WGN BLACKEYES     10      7.23         45     33  1           N
 017-1000 0-71187-32402 012 24 OZ RANCH WGN BLACKEYES     10      7.18         83     28  1 11/08/84         3
 017-1002 0-71187-31221 024 12 OZ RANCH WGN FIELD PEAS    10      8.12         49     31  1           N
 017-1004 0-71187-31216 024 12 OZ RANCH WGN LENTILS       10      8.98         53     29  1           N
 017-1005 0-71187-31203 024 12 OZ RANCH WGN BABY LIMAS    10      7.05         43     32  1           N
 017-1006 0-71187-32403 012 24 OZ RANCH WGN BABY LIMAS    10      7.27         89     32  1 08/14/84         3
 017-1007 0-71187-31205 024 12 OZ RANCH WGN LARGE LIMAS   10     11.13         69     33  1           N
 017-1008 0-71187-32405 012 24 OZ RANCH WGN LARGE LIMAS   10     11.08        133     31  1 12/13/84         2
 017-1009 0-71187-31208 024 12 OZ RANCH WGN NAVY          10      7.03         45     35  1           N
 017-1010 0-71187-30208 012 24 OZ RANCH WGN NAVY BEANS    10      6.98         85     32  1 11/08/84
 017-1011 0-71187-31206 024 12 OZ RANCH WGN GRT NORTHERNS 10      5.56         35     34  1                  2
 017-1012 0-71187-32406 012 24 OZ RANCH WGN GRT NORTHERNS 10      5.51         65     29  1           N
 017-1013 0-71187-31201 024 12 OZ RANCH WGN PINTO BEANS   10      5.84         35     30  1           N
 017-1014 0-71187-32401 012 24 OZ RANCH WGN PINTO BEANS   10      5.79         75     36  1 07/26/84        10
 017-1016 0-71187-32407 012 24 OZ RANCH WGN RED KIDNEYS   10      8.65         99     27  1           N
 017-1018 0-71187-31214 024 12 OZ RANCH WGN GREEN SPLITS  10      5.49         35     35  1           N
 017-1030 0-71187-11203 012  1 LB BENCO BABY LIMA HAM BNS 10      6.89         79     27  1 02/10/84         3
 017-1032 0-71187-10102 012  1 LB BENCO BLACKEYE HAM BEAN 10      7.32         89     31  1 08/14/84         3
 017-1034 0-71187-11241 012  1 LB BENCO PINTO HAM BEANS   10      5.90         79     38  1 11/18/83         5

                                            COMMODITY CLASS - 018  RICE, DRY
 018-0020 0-71771-01502 030  2 LB BLUE RIBBON RICE        10     22.10         89     17  3 02/08/85         8
 018-0022 0-71771-01501 030  1 LB BLUE RIBBON RICE        10     11.10         49     24  3 02/08/85         8
 018-0025 0-71771-01503 020  3 LB BLUE RIBBON RICE        10     21.76         99     10- 3 02 08/85       204
 018-0030 0-71771-01505 012  5 LB BLUE RIBBON RICE        10     21.82        205     11  3 02/08/85        15
 018-0035 0-71771-01510 006 10 LB BLUE RIBBON RICE        10     21.72        389      7  3           N
 018-0040 0-71771-01520 003 20 LB BLUE RIBBON RICE        10     20.76        655      6- 3 02/08/85        28
 018-0050 0-00000-00000 001 50 LB BLUE RIBBON RICE 50 LB  10     13.03       1225      6- 3 02/08/85         4
 018-0100 0-17400-10550 030  1 LB MAHATMA LONG GRAIN RICE 10     10.77         49     27  3           N
 018-0102 0-17400-10675 030  2 LB MAHATMA LONG GRAIN RICE 10     21.18         85     17  3           N
 018-0107 0-17400-10800 020  3 LB MAHATMA L G RICE        10     21.03         99      6- 3 02/08/85         5
 018-0109 0-17400-10060 012 12 OZ MAHATMA BROWN RICE      10      4.95         59     30  3 11/14/80
 018-0114 0-17400-10535 012 28 OZ MAHATMA L G BROWN RICE  10     10.36        119     27  3           N
 018-0115 0-00000-00000 020  3 LB O HENRY FCY RICE POLY   10     17.25        109     21  3
 018-0120 0-00000-00000 012  5 LB O HENRY FCY RICE        10     17.07        169     16  3 02/08/85         2
 018-0122 0-41340-02466 006 10 LB O HENRY FCY RICE        10     17.04        349     19  3 02/14/85         1
 018-0125 0-00000-00000 003 20 LB O HENRY FCY RICE        10     16.85        679     17  3           N
 018-0127 0-00000-00000 001 50 LB OHENRY FCY RICE         10     11.75       1443     19  3           N
 018-0135 0-35200-05514 020  3 LB RICELAND RICE           10     20.95         99      6- 3 04/04/85
 018-0139 0-50700-00627 030  2 LB R&W LONG GRAIN RICE     10     17.95         73     18  3 02/08/85         8
 018-0140 0-50700-00162 020  3 LB R&W LONG GRAIN RICE     10     17.79         89         3 02/08/85        16
 018-0141 0-50700-02161 012  5 LB R&W LONG GRAIN RICE     10     17.71        149      1  3 02/08/85        11

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 CHARLESTON        CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE                IKB2      DATE 04/12/85                        PAGE     33  1541
T  ITEM                                                               C                                    DATE      A     AVG     DSD     S  TEMP-PRICE
W  CODE          UPC      PACK   SIZE        DESCRIPTION           GL G   COST       SRP   CS GIG ZN LAST CHG I F  MVMT   VENDOR T DLT DT

                                          COMMODITY CLASS - 021  PEACH PEAR PNAPL  —
021-0264 0-24000-06473 024 #5 29 OZ ARGO SLCD PEACHES        10    20.11      95   12   4 04/04/85
021-0290 0-50700-02328 024  2 1/2 R&W HALVES CLING PEACHS     10    20.93      98   12   4 02/08/85
021-0301 0-50700-02357 024  2 1/2 R&W SLICE CLING PEACHES     10    20.93      95   12   4 02/08/85 N
021-0335 0-48300-01054 012  29 OZ DEL MONTE WH SPIC PEACH     10    19.11      95   18   4          N
021-0337 0-24000-01065 024    303 DELM YC PEACH SLICES        10    16.95      83   15   4 02/08/85        1
021-0338 0-24000-01114 024   6.75 DELM YC PEACH SLICES        10    11.54      59   19   4 02/08/85        6
021-0339 0-24000-01044 024    303 DFLM YC PEACH HALVES        10    16.95      83   15   4 02/08/85        4
021-0340 0-24000-01041 024  2 1/2 DELM YC PEACH HALVES        10    23.02     113   15   4          N
021-0341 0-24000-00210 012  4.50Z DELM DICED YC PEACH CUP     10    12.78     135   21   4            N
021-0350 0-24000-01062 024  2 1/2 DELM YC PEACH SLICE         10    23.02     113   15   4          N
021-0353 0-24000-01922 024  16 OZ DELM LITE CHNK MIX FRT      10    17.75      89   17   4 02/08/85
021-0368 0-24000-01933 024  16 OZ DELM LITE HLV YC PEACH      10    16.35      83   18   4 02/28/85        4
021-0370 0-24000-01936 024    16Z DELM PEACH SLI LITE         10    16.35      83   18   4          N
021-0415 0-39100-30967 012  22 OZ SUNSHINE PICKLED PEACHS     10    13.66     149   24   4 02/08/85        7
021-0430 0-50700-02402 024    303 R&W BART PEAR HALVES        10    16.70      79   12   4 02/08/85        5
021-0440 0-50700-02404 024  2 1/2 R&W BART PEAR HALVES        10    23.81     123   20   4 02/08/85        6
021-0452 0-24000-01025 024    303 DELM PEAR HALVES            10    17.70      89   17   4 02/28/85
021-0456 0-24000-02214 024    16Z DELM PEAR HLV-LITE          10    17.30      87   17   4 02/08/85        2
021-0470 0-24000-01022 024  29 OZ DELM PEAR HALVES            10    24.77     123   16   4          N
021-0473 0-24000-01035 024  8 1/2 DELM SLICED PEARS           10    11.98      59   15   4 02/08/85
021-0475 0-24000-01034 024  16 OZ DEL MONTE SLICED PEARS      10    17.70      89   17   4          N
021-0625 0-24000-00196 024  15.25 DELM CRUSH PINE NATL JC     10    14.49      75   20   4 04/04/85        5
021-0630 0-24000-01221 024  20 OZ DELM CRUSHED PINEAPPLE      10    16.46      93   17   4          N
021-0632 0-24000-00385 024  6.25Z DELM CRUSHED PINEAPPLE      10    10.26      53   19   4 02/08/85        2
021-0634 0-24000-00170 024   8 OZ DELM CRUSH PINE NATL JC     10    10.26      53   18   4          N
021-0636 0-24000-00165 024  20 OZ DELM CRUSH PINE NATL JC     10    18.48      93   17   4 02/08/85        6
021-0640 0-38900-00602 024  20 OZ DOLE CRSH PINE HVY SYRP     10    16.16      93   19   4 02/08/85        7
021-0670 0-73600-00337 024     #2 DOLE CRUSH PINE NATL-JC     10    16.16      93   19   4 02/08/85        6
021-0673 0-73600-00336 024  20 OZ EMPRESS CRUSHED PINEAPP     10    15.00      75   21   4
021-0660 0-73600-00335 024  20 OZ EMPRESS SLIC PINEAP/JUC     10    15.00      75   17   4 03/22/85   N
021-0686 0-73600-00337 024  20 OZ EMPRESS CH PNAPPL/JUICE     10    15.00      75   17   4 04/04/85
021-0650 0-24000-00364 024  6.25Z DELM SLICED PINEAPPLE       10    10.26      53   19   4 02/08/85        5
021-0662 0-24000-00196 024  15.25 DELM SLIC PINE NATL JC      10    14.49 #2   75   20   4 04/04/85
021-0663 0-24000-01185 024  20 OZ DELM SLIC PINE NATL JCE     10    18.48      93   17   4 02/08/85
021-0900 0-24000-01231 024  20 OZ DELM SLICED PINEAPPLE       10    18.48      93   17   4          N
021-0910 0-38900-00102 024  20 OZ DOLE SLICE PINE HVY SYR     10    18.18      93   19   4 02/08/85        4
021-0915 0-38900-00109 024   8 OZ DOLE SLICE PINE SYRUP       10     9.30      49   21   4 06/22/84        6
021-0919 0-38900-00609 024   8 OZ DOLE CRUSH PINE SYRUP       10    10.16      53   20   4 06/07/84        8
021-0940 0 38900-00143 024     #2 DOLE SLICE PINE NATL-JC     10    18.18      89   15   4 02/08/85
021-1037 0-24000-00166 024   8 OZ SLICED PINES IN JUICE       10    10.26      53   19   4          N
021-1143 0-24000-00197 024  15.25 DELM CHUNK PINE NATL JC     10    14.49      75   20   4 04/04/85        2
021-1148 0-24000-00164 024  20 OZ DELM CHUNK PINE NATL JC     10    18.48      93   17   4 02/08/85
021-1150 0-24000-00166 024   8 OZ DELM CHUNK PINE NATL JC     10    10.26      53   19   4          N
021-1180 0-38900-00473 024     #2 DOLE CHUNK PINE NATL-JC     10    18.16      93   19   4 02/08/85
021-1182 0-38900-00462 024  20 OZ DOLE CHK PINE HVY SYRUP     10    18.18      93   19   4 02/08/85        2

                                          COMMODITY CLASS - 022  CAN FRUIT, MISC
022-0239 0-46000-13003 012    # 2 MUSSELMAN SLICED APPLES     10    10.04      99   15   4          N
022-0261 0-46000-13909 012  14 OZ MUSSEL SPICE APL RING       10    10.79     109   18   4          N
022-0265 0-43600-00040 012  15 OZ W H SPICED APPLE RINGS      10    10.32      99   13   4 02/08/85        7
022-0266 0-43600-00300 012  #-2.5 WHT HSE SLICED APPLES       10     9.82      99   17   4          N
022-0271 0-46000-14203 012  15 OZ MUSS CRABAPPLE GLASS        10    10.92     115   21   4 04/04/85
022-0392 0-24000-01004 024  8.75Z DELM APRICOT HALVES         10    13.43      69   19   4          N
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 CHARLESTON       CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE          (KBI)     DATE 04/12/85              PAGE     34  1542

T  ITEM                                                           C                                 DATE     A L  AVG   DSD   S  TEMP PRICE
W  CODE          UPC       PACK   SIZE        DESCRIPTION      GL G  COST        SRP   CS GIC ZN LAST CHG I F MVMT  VENDOR T DLT DT


                                             COMMODITY CLASS - 022  CAN FRUIT, MISC
 022-0395 0-24000-01003 024  17 OZ DEL MONTE APRICOT HLVS  10     20.55         105     18  4 02/08/85
 022-0700 0-31200-01000 024    300 O S CRANBERRY JELLIED   10     13.78          69     17  4 02/08/85        37
 022-0715 0-31200-01006 024   8 OZ O S CRANBERRY JELLIED   10      7.61          39     19  4 02/08/85
 022-0720 0-31200-01035 024    300 O S CRANBERRY SAU WHOLE 10     13.78          69     17  4 02/08/85        36
 022-0730 0-31200-03000 012  14 OZ O S CRAN ORANGE RELISH  10      9.30          53     17  4 02/08/85
 022-0781 0-24000-01148 024  11 OZ DELM MANDARIN ORANGES   10     17.21          69     19  4 02/08/85         3
 022-0790 0-47600-00213 024  11 OZ DURKEE MANDARIN ORANGES 10     12.60          69     24  4          N
 022-9025 0-43600-00301 012  15 OZ W HOUSE ESCALLOP APPLES 10      9.30          99     22  4          N

                                             COMMODITY CLASS - 023  DRIED-GLAZED FRT
 023-0140 0-24000-01691 012  16 OZ DM MEDIUM PRUNES        10     10.41         109     20  4 02/08/85
 023-0208 0-24000-01762 012   8 OZ DELM DRIED APPLES       10     16.44         169     19  4 02/08/85
 023-0221 0-24000-01629 012   6 OZ DELM DRIED APRICOTS     10     20.91         215     19  4
 023-0254 0-13130-00321 012  16 OZ DROMEDARY PITTED DATES  10     37.10         389     21  4          N
 023-0255 0-13130-00355 012   8 OZ DROMEDARY DATE NUT ROLL 10     10.35         109     21  4 02/08/85
 023-0257 0-13130-00301 024   8 OZ DROMEDARY PITTED DATES  10     40.20         209     20  4 02/08/85
 023-0258 0-13130-00322 024   8 OZ DROMEDARY CHOPPED DATES 10     36.95         189     19  4 02/08/85         7
 023-0269 0-24000-01210 012  17 OZ DELM KADOTA FIGS        10     13.23         139     21  4          N
 023-0273 0-24000-01963 012   8 OZ DELM MIXED DRIED FRUIT  10     14.64         155     20  4 02/08/85
 023-0307 0-24000-01964 012   8 OZ DELM DRIED PEACHES      10     15.99         169     21  4 02/08/85
 023-0315 0-24000-01664 012  16 OZ DM LARGE PRUNES         10     11.94         115     13  4 02/08/85
 023-0319 0-24000-01665 012  16 OZ DM MEDIUM PRUNES        10     10.44         105     17  4 02/08/85
 023-0328 0-24000-01925 012  12 OZ DELM PITTED PRUNES      10     12.62         129     18  4 02/08/85
 023-0398 0-24000-01682 024   9 OZ DM SEEDLESS RAISINS BOX 10     13.41          69     19  4 02/08/85
 023-0400 0-24000-01927 024  15 OZ DELM SEEDLESS RAISN BOX 10     19.71          95     14  4 02/08/85        42
 023-0403 0-24000-01878 024  15 OZ DELM GLDN SDLS RAISINS  10     19.71         103     20  4 02/08/85        21
 023-0409 0-24000-01852 024  14 5Z DELM SEEDLESS RAISINS   10     16.10          85     21  4 02/08/85   N
 023-0430 0-41143-02460 024  15 OZ SUNMAID SEEDLESS RAISIN 10     20.57         109     21  4 02/08/85         3
 023-0439 0-24000-01953 024   9 OZ DELM SEEDLESS RAISINS   10     16.23          83     19  4 02/08/85
 023-0443 0-41143-02570 024  14.5Z SMAID MIN SDLESS RAISIN 10     16.54          89     23  4 02/08/85
 023-0445 0-41143-02010 024   6 PK SUNMAID SEEDLESS RAISIN 10     16.75          89     22  4 02/08/85         4
 023-0446 0-41143-02870 012  24 OZ SUNMAID SDLESS RAISINS  10     16.08         165     19  4 02/08/85   N
 023-0447 0-41143-02450 024   9 OZ SUNMAID SEEDLESS RAISIN 10     13.90          75     23  4 02/08/85         7

                                             COMMODITY CLASS - 024  VEGETABLES CANND
 024-0200 0-24000-06506 024  15 OZ ARGO ASPARAGUS SPEARS   10     24.69         129     20  1 08/16/84
 024-0238 0-24000-01297 024  15 OZ DELM CUTS&TIPS GRN ASP  10     29.63         163     24  1          N
 024-0240 0-24000-01273 024  15 OZ DELM ASP SPEARS GREEN   10     35.77         199     25  1 11/10/83         8
 024-0241 0-24000-01303 024  101/2 DELM MWASH TIPS GRN ASP 10     29.03         169     28  1 11/10/83
 024-0249 0-20000-10136 024  10.5Z GG LESUEUR BRND SP ASPA 10     30.00         169     26  1 04/04/85         4
 024-0310 0-50700-00452 024    303 R&W SLICED BEETS        10      8.47          43   * 18  1 03/22/85         8
 024-0320 0-50700-00474 024    303 R&W WHOLE BEETS         10      8.26          45     24  1 11/01/84         3
 024-0330 0-24000-01408 024  8.25Z DELM SLICED BEETS       10      7.40          43     28  1          N
 024-0333 0-37100-03231 024    303 LIBBY SLICED BEET       10      9.64          59     32  1          N
 024-0349 0-24000-01409 012  16 OZ DELM PKLD SLICED BEETS  10      7.98          89     25  1          N
 024-0355 0-37100-03210 012  16 OZ LIBBY TINY WH PKLD BEET 10      6.43          99     29  1 12/13/84
 024-0359 0-37100-03249 012  16 OZ LIBBY SLI PKL BEETS GL  10      7.79          95     32  1 12/13/84         1
 024-0412 0-64144-06120 024  15 OZ LUCKS FIELD PEAS        10     11.12          59     21  1 03/22/85         5
                                                  TEMPORARY SRP                 .49    EXPIRATION DATE 04/25/85
 024-0417 0-64144-06147 024  15 OZ LUCKS CROWDER PEAS        10   11.12          59     21  1 03/22/85
                                                  TEMPORARY SRP                 .49    EXPIRATION DATE 04/25/85
 024-0446 0-64144-06102 024  15 OZ LUCKS BLACKEYE PEAS       10   11.12          59     21  1 03/22/85         4
                                                  TEMPORARY SRP                 .49    EXPIRATION DATE 04/25/85
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  CHARLESTON         CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE          (KB2)      DATE 04/12/85             PAGE      35  1543

T  ITEM                                                       C                         DATE    A L  AVG    DSD   S  TEMP-PRICE
*  CODE        UPC     PACK  SIZE       DESCRIPTION        GL G  COST     SRP CS GIG ZN LAST CHG I F MVMT  VENDOR T DLT DT

                                          COMMODITY CLASS - 024  VEGETABLES CANND
 024-0450 0-64144-06101 024  15 OZ LUCKS PINTO BEAN W/PORK 10   11.12      59   21  1 03/22/85         2
                                                   TEMPORARY SRP           49 EXPIRATION DATE 04/25/85
 024-0470 0-50700-00320 024    303 R&W LIMA BEANS          10   11.56      63   24  1 01/24/85
 024-0495 0-24000-01395 024    303 DELM EG GRDN GRN LIMAS  10   15.51      85   24  1 06/23/83
 024-0500 0-24000-01397 024   8.5Z DELM LIMA BEANS         10   10.72      59   24  1
 024-0522 0-64144-06104 024  15 OZ LUCKS GIANT LIMAS       10   11.95   2/119   16  1 01/31/85         1
 024-0524 0-70522-22220 024  15 OZ E TEXAS GRN LIMA BEANS  10    9.25      41 *  6  1 04/04/85        90
 024-0528 0-28800-15013 012  40 OZ HANOVER BUTTER BEANS    10   12.46     139   25  1           N
 024-0545 0-50700-00327 024    303 R&W TINY GR BTR BEANS   10   12.07      63   20  1 09/06/84         8
 024-0552 0-39400-01670 024    300 BUSHS BABY BUTTER BEANS 10    7.50      43   27  1
 024-0555 0-39400-01810 024    300 BUSH PINTO BEANS        10    6.65      39   29  1 09/09/83         6
 024-0610 0-39400-01774 024    300 BUSH NAVY BEANS         10    7.10      39   24  1 09/09/83         2
 024-0620 0-39400-01782 024    300 BUSH NORTHERN BEANS     10    6.70      39   28  1 09/09/83
 024-0628 0-39400-01690 024    300 BUSH CHILI HOT BEANS    10    7.35      43   29  1 09/09/83        22
 024-0642 0-26800-14315 024 15OZ   HANOVER KIDNEY BEANS    10    8.41      49   28  1
 024-0649 0-39400-01747 024    300 BUSHS LGT RED KIDNEY BN 10    7.65      45   29  1 11/08/84        13
 024-0650 0-52000-01041 024    300 VAN&CAMP KIDNEY BEAN    10    9.55      53   25  1 01/28/83        10
 024-0656 0-39400-01754 012  40 OZ BUSHS LGT RED KIDNEY BN 10   10.45     115   24  1 01/12/84         2
 024-0660 0-28800-14317 012  27 OZ HANOVER REDSKIN KDNY BN 10    7.69      85   25  1
 024-0665 0-28800-14313 012  40 OZ HANOVER LT KIDNEY BEAN  10   10.38     115   25  1 09/22/83
 024-0700 0-50700-00804 024    303 R&W SLICED CARROTS      10    8.47      49   28  1 03/29/85         7
 024-0713 0-24000-01286 024  16 OZ DELM SLICED CARROTS     10   10.43      59   26  1           N
 024-0717 0-24000-01488 024  8.25Z DELM SLICED CARROTS     10    6.66      39   29  1           N
 024-0726 0-51100-04841 024 303    THK YOU FGRLING CARROTS 10   13.51      75   25  1           N
 024-0730 0-24000-01320 024   8.5Z DELM PEAS AND CARROTS   10    7.68      43   26  1           N
 024-0732 0-24000-01319 024    303 DELM PEAS & CARROTS     10   12.44      69   25  1 02/02/84
 024-0735 0-37100-04308 024    303 LIBBY PEAS & CARROTS    10   11.95      69   28  1           N
 024-0761 0-52000-19411 024    303 SUNSHN CHOP MUSTARD GRN 10    7.60   3/119   20  1 04/04/85         2
 024-0762 0-52000-21411 024    303 SUNSHN CHOP TRUNIP GRNS 10    7.60   3/119   20  1 04/04/85         7
 024-0763 0-52000-28411 024    303 SUNSHN CHOP TURN W/DICE 10    7.85   3/119   18  1 04/04/85        27
 024-0764 0-52000-24411 024    303 SUNSHN CHOP COLLARD GRN 10    7.60   3/119   20  1 04/04/85        23
 024-0775 0-39400-01140 024    303 BUSH CHOP MUSTARD GREEN 10    7.55      39   19  1
 024-0781 0-39400-01182 024    303 BUSH TURNIP GRN W/ROOTS 10    7.95      39   15  1 09/09/83         9
 024-0783 0-39400-01127 024    303 BUSH CHOP TURNIP GREENS 10    7.55      39   19  1 09/09/83         3
 024-0795 0-39400-01166 024    303 BUSH CHOP COLLARD GREEN 10    7.55      39   19  1 09/09/83         3
 024-0832 0-39400-01713 024    303 BUSH GOLDEN HOMINY      10    6.75      39   28  1 11/03/83         7
 024-0840 0-50700-03120 024    303 R&W KRAUT               10    8.47      49   28  1 01/10/85         2
 024-0859 0-24000-01478 024   8 OZ DELM KRAUT              10    7.93      45   27  1           N
 024-0860 0-24000-01479 024  16 OZ DELM KRAUT              10   11.38      63   25  1
 024-0873 0-37100-04607 024    303 LIBBY SHREDD KRAUT      10   10.05      59   29  1 03/09/84         4
 024-0953 0-41207-10083 024    303 LORD CHEST CUT OKRA     10   13.00      75   28  1
 024-0954 0-41207-10021 024    303 LORD CHEST OKRA & TOM   10   13.00      75   28  1 08/16/84         7
 024-0956 0-39400-01571 024  14.5Z BUSH OKRA & TOMATOES    10   13.95      79   26  1           N
 024-0981 0-13130-00408 024   4 OZ DROM PIMENTO DICED      10   18.80     109   28  1 12/13/84         5
 024-0982 0-13130-00401 024   2 OZ DROM PIMENTO SLICED     10   10.60      59   25  1 10/15/81        11
 024-0983 0-13130-00403 024   4 OZ DROM PIMENTO SLICED     10   18.80     109   28  1           N
 024-0985 0-13130-00420 024   4 OZ DROMEDARY PIMENTO PIECE 10   18.80     109   28  1           N
 024-0990 0-39000-04504 024    303 LIBBY PUMPKIN           10   14.18      73   19  1 08/16/84    N
 024-1050 0-24000-01490 024  7.75Z DELM SPINACH            10    8.15      49   31  1           N
 024-1055 0-34700-06510 024    300 POPEYE SPINACH          10    9.35      59   34  1 02/22/85
                                                   TEMPORARY SRP          .55 EXPIRATION DATE 04/18/85
 024-1065 0-39400-11120 024    303 BUSH CHOP SPINACH       10    9.15      55   31  1 01/12/84         5
 024-1087 0-28600-00062 024   4 OZ PIECES & STEMS MUSHROOM 10   13.03      79   31  1 10/27/83
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CHARLESTON       CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE           (KB2)     DATE 04/12/85              PAGE     36  1544

T  ITEM                                                      C                                  DATE      A L  AVG    DSD    S  TEMP-PRICE
W  CODE          UPC        PACK   SIZE       DESCRIPTION     GL G  COST        SRP   CS GIG ZN LAST CHG  I F  MVMT   VENDOR T  DLT DT

                                          COMMODITY CLASS - 024  VEGETABLES CANND
 024-1089 0-28600-00064 012    6 OZ PIECES & STEMS MUSHROOM 10     12.78        149     29  1 10/27/83            2
 024-1092 0-20000-16326 012    6 OZ G GNT SLICED MUSHROOMS  10     14.00        155     25  1 05/10/84            4
 024-1093 0-20000-16327 012    6 OZ G GNT WHOLE MUSHROOMS   10     14.00        155     25  1 05/10/84            2
 024-1096 0-20000-10735 024  2 1/2 G G SLICE MUSHROOMS      10     13.25         79     30  1 05/10/84            5
 024-1097 0-20000-10741 012  4 1/2 G G SLI MUSHROOM         10     11.30        135     30  1 03/29/85            2
                                                   TEMPORARY SRP             1.25   EXPIRATION DATE 04/18/85
 024-1103 0-28600-00042 024    4 OZ SLICED MUSHROOM         10     16.31         99     31  1
 024-1104 0-70475-36202 024  2.50Z DAWN FR WH MUSHRM GLASS  10     10.85         65     30  1
 024-1109 0-28600-00022 024    4 OZ BUTTON MUSHROOM         10     16.31         99     31  1,            N
 024-1112 0-71100-00012 012    3 OZ B N B MUSHROOMS SLICED  10      8.20         95     28  1 01/07/83            3
 024-1120 0-70475-01064 024    6 OZ DAWN FRESH STEAK SAUCE  10      6.30         39     33  1 06/29/84      N
 024-1126 0-37100-00743 024    4 OZ LIBBY MSHRM-STM/NO SLT  10     13.44         79     29  1             N
 024-1133 0-37100-00510 012  6.5 Z SENECA STMS&PCS MUSHRMS  10     16.54        189     27  1 06/29/84            2
 024-1134 0-37100-00514 012  6.5 Z SENECA SLICED MUSHROOMS  10     18.49        209     26  1 07/19/84
 024-1135 0-37100-00512 012  8.5 Z SENECA WHOLE MUSHROOMS   10     18.49        209     26  1 07/19/84
 024-1139 0-41207-10051 024    303 LORD CHAS SUCCOTASH      10     13.00         75     28  1 08/16/84            7
 024-1157 0-24000-01458 024  8.25Z DELM MIXED VEGETABLES    10      7.30         39     22  1                     2
 024-1158 0-24000-01456 024    303 DELM MIXED VEGETABLES    10     10.89         59     23  1 06/03/82            3
 024-1165 0-14500-00045 024    303 LARSEN VEG-ALL           10     10.59         59     25  1 03/01/84           14
 024-1184 0-41207-10041 024    303 L CHEST CORN OKRA & TOM  10     13.00         75     28  1 08/16/84            8
 024-1186 0-41207-10061 024    303 LORD CHESTFLD CT SQUASH  10      8.25         49     30  1 10/27/83            6
 024-1210 0-24000-01404 024  16 OZ DELM ZUCCHINI            10     13.33         75     26  1
 024-1225 0-47600-22022 024  2.6 Z C&C FRENCH FRIED ONIONS  10     15.54         93     30  1 06/29/84            5
 024-1230 0-47600-22020 012  6 OZ  DURKEE FR FRIED ONIONS   10     14.64        169     28  1 09/29/84
 024-1300 0-70475-00041 024    4 OZ GIORGIO MSHRM PCS & STM 10     10.90         73     38  1             N
 024-1305 0-70475-00042 024    4 OZ GIROGIO MSHRM BUTTONS   10     15.65         99     34  1             N
 024-1310 0-70475-00043 024    4 OZ GIORGIO SLICED MSH BTNS 10     15.65         99     34  1             N
 024-1320 0-70475-00081 024     8OZ GIORGIO MSH STMS & PCS  10     21.30        119     25  1             N
 024-8050 0-52000-08332 024    303 SUNSHINE DICE RUTABAGAS  10      8.50         49     28  1 05/18/84            4

                                          COMMODITY CLASS - 025  CANNED CORN
 025-0220 0-50700-01306 024    303 R&W CREAM GOLDEN CORN    10      8.17   [illegible]3  21  1 09/29/84           32
~~025-0227 0-50700-00795 024  16 OZ R&W WK GOLD CORN NO SLT 10      8.72~~      2/89     18  1 03/22/85            6
 025-0300 0-74089-08411 024    303 STANDARD PAK CORN        10      7.75         39   * 17  1 02/14/85          187
                                                   TEMPORARY SRP             2/69   EXPIRATION DATE 04/18/85
 025-0312 0-24000-01278 024  17 OZ DELM CR GLD CORN NO/SLT  10     11.61         69     30  1             N
 025-0320 0-24000-01441 024  8.75Z DELM CREAM GOLD CORN     10      7.82         45     28  1             N
 025-0322 0-24000-00095 024   8.75 DM WHOLE CORN NO/SALT    10      7.82         45     28  1 12/08/83            3
 025-0330 0-24000-01442 024    303 DELM CREAM GOLD CORN     10     11.61         69     30  1 02/28/85           24
 025-0334 0-37100-03613 024    303 LIBBY REG CRM STY CORN   10     11.46         65     27  1 03/29/85            9
                                                   TEMPORARY SRP              .55   EXPIRATION DATE 05/09/85
 025-0335 0-37100-03613 024    303 LIBBY CRM STY GOLD CORN  10     11.46         65     27  1             N
 025-0400 0-24000-01443 024  12 OZ DELM VP WHOLE GOLD CORN  10     11.45         63     24  1             N
 025-0410 0-20000-10419 024  12 OZ G GIANT NIBLETS CORN     10     11.46         69     31  1 07/19/84            4
 025-0440 0-20000-10453 024  12 OZ G GIANT MEXICORN         10     12.42         69     25  1 07/05/84            6
 025-0460 0-50700-01333 024    303 R&W WHOLE GOLDEN CORN    10      8.17         43     21  1 09/29/84           41
 025-0476 0-37100-03643 024    8 OZ LIBBY WHOLE GOLDEN CORN 10      7.38         43     28  1
 025-0480 0-20000-10546 024  12 OZ GR GIANT WHL WHITE CORN  10     12.90         73     26  1 12/28/84
 025-0486 0-24000-01380 024  17 OZ DELM WK GLD CRN N/SALT   10     11.61         69     30  1 02/28/85            4
 025-0490 0-20000-10473 024    303 GR GIANT WHL GOLDN CORN  10     11.46         69     31  1 07/19/84
 025-0500 0-20000-10527 024    303 GR GIANT CRM STYLE CORN  10     11.46         69     31  1 07/19/84            7
 025-0510 0-24000-01426 024    303 DELM WHOLE GOLDEN CORN   10     11.61         69     30  1 02/28/85           18
 025-0513 0-37100-03662 024    303 LIBBY REG WK CORN        10     11.46         65     27  1 03/29/85           17
                                                   TEMPORARY SRP              .55   EXPIRATION DATE 05/09/85

FORM WBL20P
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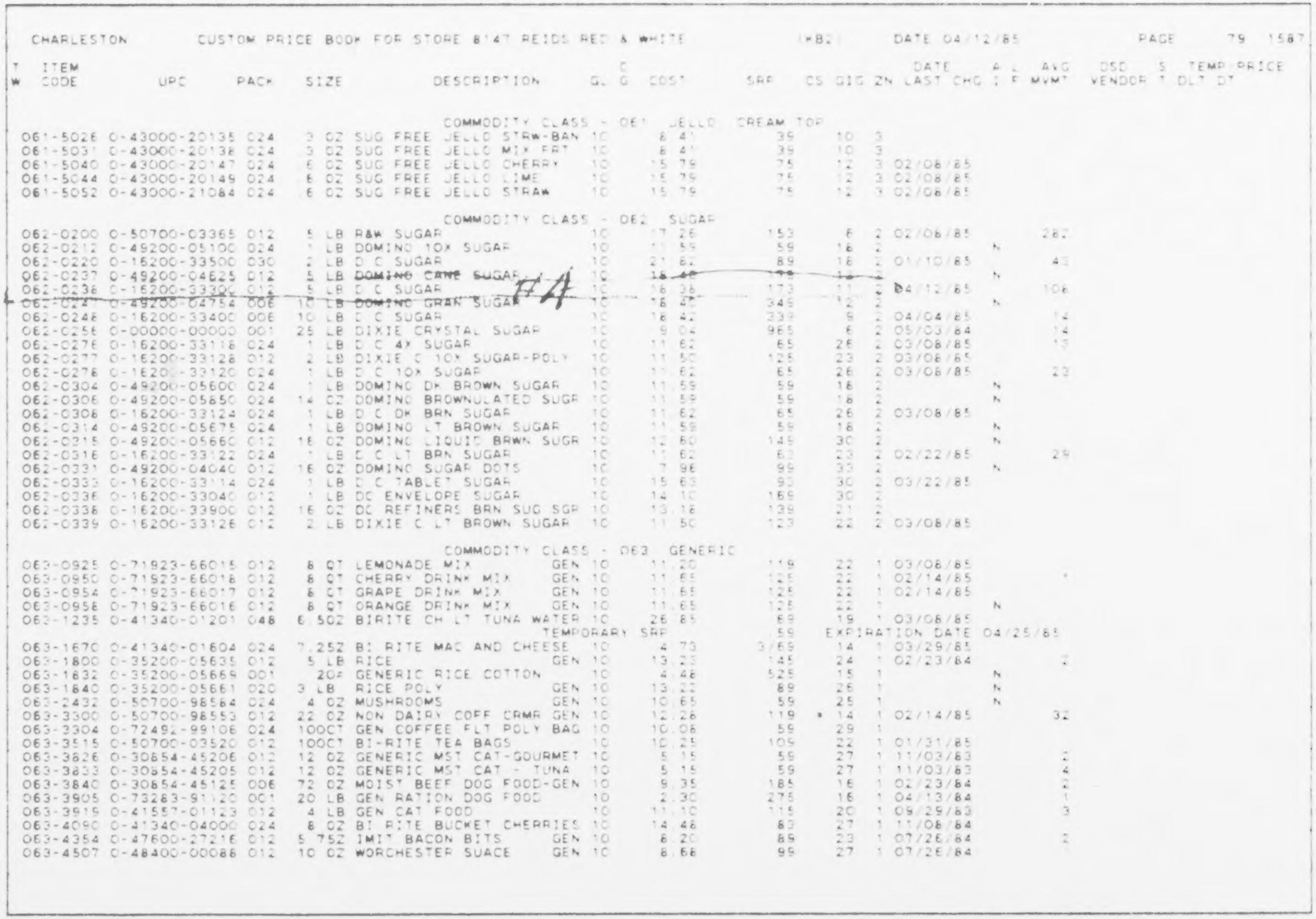

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 CHARLESTON        CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE            (HB2)      DATE 04/12/85              PAGE      79  1587

T  ITEM                                                 C                                DATE    A L  AVG    DSD    S  TEMP PRICE
W  CODE        UPC       PACK  SIZE       DESCRIPTION     GL G  COST       SRP   CS GIG ZN LAST CHG I F MVMT  VENDOR T  DLT DT

                                        COMMODITY CLASS - 061  JELLO  CREAM TOP
 061-5026 0-43000-20135 024   3 OZ SUG FREE JELLO STRW-BAN 10      8.41       39     10  3
 061-5031 0-43000-20138 024   3 OZ SUG FREE JELLO MIX FRT  10      8.41       39     10  3
 061-5040 0-43000-20147 024   6 OZ SUG FREE JELLO CHERRY   10     15.79       75     12  3 02/08/85
 061-5044 0-43000-20149 024   6 OZ SUG FREE JELLO LIME     10     15.79       75     12  3 02/08/85
 061-5052 0-43000-21084 024   6 OZ SUG FREE JELLO STRAW    10     15.79       75     12  3 02/08/85

                                        COMMODITY CLASS - 062  SUGAR
 062-0200 0-50700-03365 012   5 LB R&W SUGAR               10     17.26      153      6  2 02/08/85            287
 062-0212 0-49200-05100 024   1 LB DOMINO 10X SUGAR        10     11.55       59     18  2              N
 062-0220 0-16200-33500 030   2 LB D C SUGAR               10     21.62       89     18  2 01/10/85             43
 062-0237 0-49200-04625 012   5 LB ~~DOMINO CANE SUGAR~~   10     ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~2~~     N
 062-0238 0-16200-33300 012   5 LB D C SUGAR               10     16.36      173     11  2 04/12/85            106
 ~~062-0241 0-49200-04754 006  10 LB DOMINO GRAN SUGAR       10     16.42      349     12  2~~              N
 062-0248 0-16200-33400 006  10 LB D C SUGAR               10     16.42      339      9  2 04/04/85             14
 062-0256 0-00000-00000 001  25 LB DIXIE CRYSTAL SUGAR     10      9.04      965      6  2 05/03/84             14
 062-0276 0-16200-33118 024   1 LB D C 4X SUGAR            10     11.62       65     26  2 03/08/85             13
 062-0277 0-16200-33128 012   2 LB DIXIE C 10X SUGAR-POLY  10     11.50      125     23  2 03/08/85
 062-0278 0-16200-33120 024   1 LB D C 10X SUGAR           10     11.62       65     26  2 03/08/85             23
 062-0304 0-49200-05600 024   1 LB DOMINO DK BROWN SUGAR   10     11.59       59     18  2              N
 062-0306 0-49200-05650 024  14 OZ DOMINO BROWNULATED SUGR 10     11.59       59     18  2              N
 062-0308 0-16200-33124 024   1 LB D C DK BRN SUGAR        10     11.62       65     26  2 03/08/85
 062-0314 0-49200-05675 024   1 LB DOMINO LT BROWN SUGAR   10     11.59       59     18  2              N
 062-0315 0-49200-05660 012  16 OZ DOMINO LIQUID BRWN SUGR 10     12.60      149     30  2              N
 062-0316 0-16200-33122 024   1 LB D C LT BRN SUGAR        10     11.62       63     23  2 02/22/85             29
 062-0331 0-49200-04040 012  16 OZ DOMINO SUGAR DOTS       10      7.98       99     33  2              N
 062-0333 0-16200-33114 024   1 LB D C TABLET SUGAR        10     15.63       93     30  2 03/22/85
 062-0336 0-16200-33040 012   1 LB DC ENVELOPE SUGAR       10     14.10      169     30  2
 062-0338 0-16200-33900 012  16 OZ DC REFINERS BRN SUG SGR 10     13.18      139     21  2
 062-0339 0-16200-33126 012   2 LB DIXIE C LT BROWN SUGAR  10     11.50      123     22  2 03/08/85

                                        COMMODITY CLASS - 063  GENERIC
 063-0925 0-71923-66015 012   8 QT LEMONADE MIX        GEN 10     11.20      119     22  1 03/08/85
 063-0950 0-71923-66018 012   8 QT CHERRY DRINK MIX    GEN 10     11.65      125     22  1 02/14/85
 063-0954 0-71923-66017 012   8 QT GRAPE DRINK MIX     GEN 10     11.65      125     22  1 02/14/85
 063-0958 0-71923-66016 012   8 QT ORANGE DRINK MIX    GEN 10     11.65      125     22  1              N
 063-1235 0-41340-01201 048 6.5OZ BIRITE CH LT TUNA WATER 10      26.85       69     19  1 03/08/85
                                                  TEMPORARY SRP           .59   EXPIRATION DATE 04/25/85
 063-1670 0-41340-01604 024 7.25Z BI RITE MAC AND CHEESE  10      4.73     3/69     14  1 03/29/85
 063-1800 0-35200-05635 012   5 LB RICE                GEN 10     13.23      145     24  1 02/23/84              2
 063-1832 0-35200-05669 001    20# GENERIC RICE COTTON     10      4.48      525     15  1              N
 063-1840 0-35200-05661 020 3 LB   RICE POLY           GEN 10     13.22       89     26  1              N
 063-2432 0-50700-98564 024   4 OZ MUSHROOMS           GEN 10     10.65       59     25  1              N
 063-3300 0-50700-98553 012  22 OZ NON DAIRY COFF CRMR GEN 10     12.26      119   * 14  1 02/14/85             32
 063-3304 0-72492-99106 024 100CT GEN COFFEE FLT POLY BAG 10      10.06       59     29  1
 063-3515 0-50700-03520 012 100CT BI-RITE TEA BAGS         10     10.25      105     22  1 01/31/85
 063-3826 0-30654-45206 012  12 OZ GENERIC MST CAT-GOURMET 10      5.15       59     27  1 11/03/83              2
 063-3833 0-30654-45205 012  12 OZ GENERIC MST CAT - TUNA  10      5.15       59     27  1 11/03/83              4
 063-3840 0-30654-45125 006  72 OZ MOIST BEEF DOG FOOD-GEN 10      9.35      185     16  1 02/23/84              2
 063-3905 0-73283-91120 001  20 LB GEN RATION DOG FOOD     10      2.30      275     16  1 04/13/84              1
 063-3919 0-41557-01123 012   4 LB GEN CAT FOOD            10     11.10      115     20  1 09/29/83              3
 063-4090 0-41340-04000 024   8 OZ BI RITE BUCKET CHERRIES 10     14.46       83     27  1 11/08/84
 063-4354 0-47600-27216 012 5.75Z IMIT BACON BITS      GEN 10      8.20       89     23  1 07/26/84              2
 063-4507 0-48400-00088 012  10 OZ WORCHESTER SUACE    GEN 10      8.66       99     27  1 07/26/84
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 CHARLESTON          CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE                 KB2       DATE 04/12/85
T  ITEM#                                                                                                                  PAGE      8C  1568
W  CODE          UPC        PACK   SIZE                                    C
                                             DESCRIPTION            GL  O   COST      SRP   CS GIG ZN   DATE      A L  AVG    DSD    S  TEMP-PRICE
                                                                                                        LAST CHG  I F  MVMT  VENDOR  T  DLT DT

                                                   COMMODITY CLASS - 063  GENERIC
  063-4528 0-41340-04503 012  24 OZ BI-RITE SALAD MUSTARD       10        7.65       85    25      1
  063-4611 0-72950-00622 012  32 OZ CATSUP                  GEN 10       10.50      103    15      1              N
  063-4710 0-50700-98556 012  24 OZ PANCAKE/WFL SYRUP       GEN 10        8.11       93    27      1  11/29/84
  063-4814 0-41340-04840 012  18 OZ BI-RITE CRNCH PNUT BTR      10       11.33      123    23      1              N
  063-4816 0-41340-04841 012  18 OZ BI-RITE CRMY PNUT BTR       10       11.33      123    23      1              N
  063-4847 0-41340-04802 012  32 OZ BI-RITE GRAPE JELLY         10        9.80      105    22      1              N
  063-4874 0-41340-04801 012  32 OZ BI-RITE STRAWBERRY PRES     10       12.69      135    20      1              N
  063-5420 0-50700-98502 008  48 OZ GENERIC OIL VEGETABLE       10       15.97      249    20      1              N
  063-5440 0-50700-98500 008  48 OZ GENERIC CORN OIL            10       15.81      245    21      1              N
  063-5620 0-50700-99078 024  16 OZ GEN BROWNIE MIX             10       13.48       69    19      1              N
  063-5825 0-71923-77001 012  161/2 GEN RTS CHOC FROSTING       10       10.17       99    14      1
  063-5830 0-71923-77000 012  161/2 GEN RTS VAN FROSTING        10       10.17       99    14      1
  063-5904 0-50700-98755 024  161/2 GEN CAKE MX YELLOW          10       13.18       69    20      1              N
  063-6235 0-41340-08201 015  6 RLL BI-RITE BATH TISSUE         10       15.66      129    18      1
  063-6401 0-47600-26104 024   4 OZ BLACK PEPPER GEN            10       14.76       63    26      1  04/04/85          4
  063-6404 0-47600-26105 012   8 OZ GENERIC BLACK PEPPER        10       13.17      139    21      1  04/04/85          4
  063-6407 0-47600-27217 012  18 OZ GARLIC SALT             GEN 10        9.07       99    24      1  07/26/84          2
  063-6413 0-47600-28060 024   8 OZ IMIT VANILLA GEN            10        7.91       45    27      1  07/26/84    N     3
  063-6416 0-47600-27210 012    1 Z PARSLEY FLAKES          GEN 10        6.66       85    35      1  07/26/84
  063-6425 0-47600-27212 012  5.5 Z CHOPPED ONION           GEN 10       11.75      139    30      1  03/08/85          5
  063-6435 0-47600-27211 012  2.5 Z OREGANO                 GEN 10        8.86      105    30      1              N
  063-6520 0-50700-99057 024  26 OX SALT IODIZED            GEN 10        4.79       29    31      1              N
  063-6525 0-41557-00014 024  26 OZ SALT REGULAR            GEN 10        4.79       29    31      1              N
  063-6740 0-50700-98542 010  50 OZ AUTO DISH DETERGENT     GEN 10       12.24      145    18      1              N
  063-6805 0-24900-85516 012  GIANT GENERIC POWDER DETG         10       11.86      119    17      1
  063-7007 0-38700-00740 012  40 CT BI-RITE FAB SOFT SHEETS     10       10.56      119    26      1              N
  063-7014 0-41547-22223 006  128 Z PINK FAB SOFTENER       GEN 10        5.02      113    26      1  02/23/84
  063-7100 0-41547-22222 006  128 Z BLEACH LIQUID           GEN 10        3.86       75    14      1  04/13/84          6
  063-7330 0-38700-48002 012  12 OZ TOILET BOWL CLNR        GEN 10        6.27       65    20      1  03/25/82
  063-7720 0-43000-90501 060  BULBS 50-150-250 3 WAY 12/PK      10       91.20      199    24      1
  063-7600 0-71187-71225 024  25 FT ALUMINUM FOIL           GEN 10       10.79       59    24      1  02/23/84
  063-7818 0-13700-15012 024  15 CT TALL KITCHEN BAGS       GEN 10       13.39       73    24      1              N
  063-7822 0-39800-55095 024  10 CT GENERIC TRASH BAGS          10       14.64       79    23      1              N
  063-7825 0-39800-55118 012  20 CT TRASH BAG               GEN 10       13.38      149    25      1              N
  063-7860 0-39800-55039 024  150CT SANDWICH BAGS           GEN 10       10.20       55    23      1              N
  063-7862 0-13700-15048 024  80 CT GENERIC SANDWICH BAG        10        7.20       39    23      1              N
  063-7870 0-13700-15005 012  10 CT GEN LAWN/LEAF BAG 5 BUS     10       14.38      155    23      1              N
  063-7918 0-07129-01225 040  25CT  GENERIC 12OZ FOAM CUPS      10       15.73    2/100    21      1                   40
  063-7935 0-11166-03614 024  36 CT KNIFE-FORK-SPOON HD GEN 10       12.96       69    22      1              N
  063-8020 0-41340-08101 030  1 RLL BI-RITE PAPER TOWEL         10       14.01       59    21      1
  063-8100 0-50700-98560 030  1ROLL PAPER TOWELS            GEN 10       12.50       49    15      1  02/23/84
  063-8125 0-41340-08001 012  300CT BI-RITE NAPKIN              10       14.42      159    24      1
  063-9000 0-50700-98547 048  LARGE FILLED MILK             GEN 10       15.73       39    16      1  12/08/83          46
  063-9610 0-19700-72195 048  300CT COTTON SWABS            GEN 10       43.08      125    28      1              N

                                                   COMMODITY CLASS - 064  SPICES
  064-0740 0-21500-00064 012   4 OZ LAWRY GARLIC SPREAD         10        8.92      109    32      1  02/28/85
  064-0805 0-00000-00002 012   4 OZ DURKEE LITE SEASON SALT     10       10.60      129    32      1              N
  064-1472 0-47800-00052 024   2 OZ ACCENT SEASONING            10       20.44      119    28      1  01/10/85          9
  064-1480 0-47800-00054 024  4 1/2 ACCENT SEASONING            10       36.25      213    29      1  01/10/85          23
  064-1485 0-47800-51319 012  10 OZ ACCENT SEASONING            10       34.48      399    28      1  01/10/85          2
  064-1532 0-36200-01030 024  3 1/2 ADOLPH SEASON TENDERIZE     10       27.30      159    28      1  12/20/84
  064-1543 0-36200-01040 024  3 1/2 ADOLPH NON SEAS MT TEND     10       27.30      159    28      1  12/20/84

FORM WBL2DP
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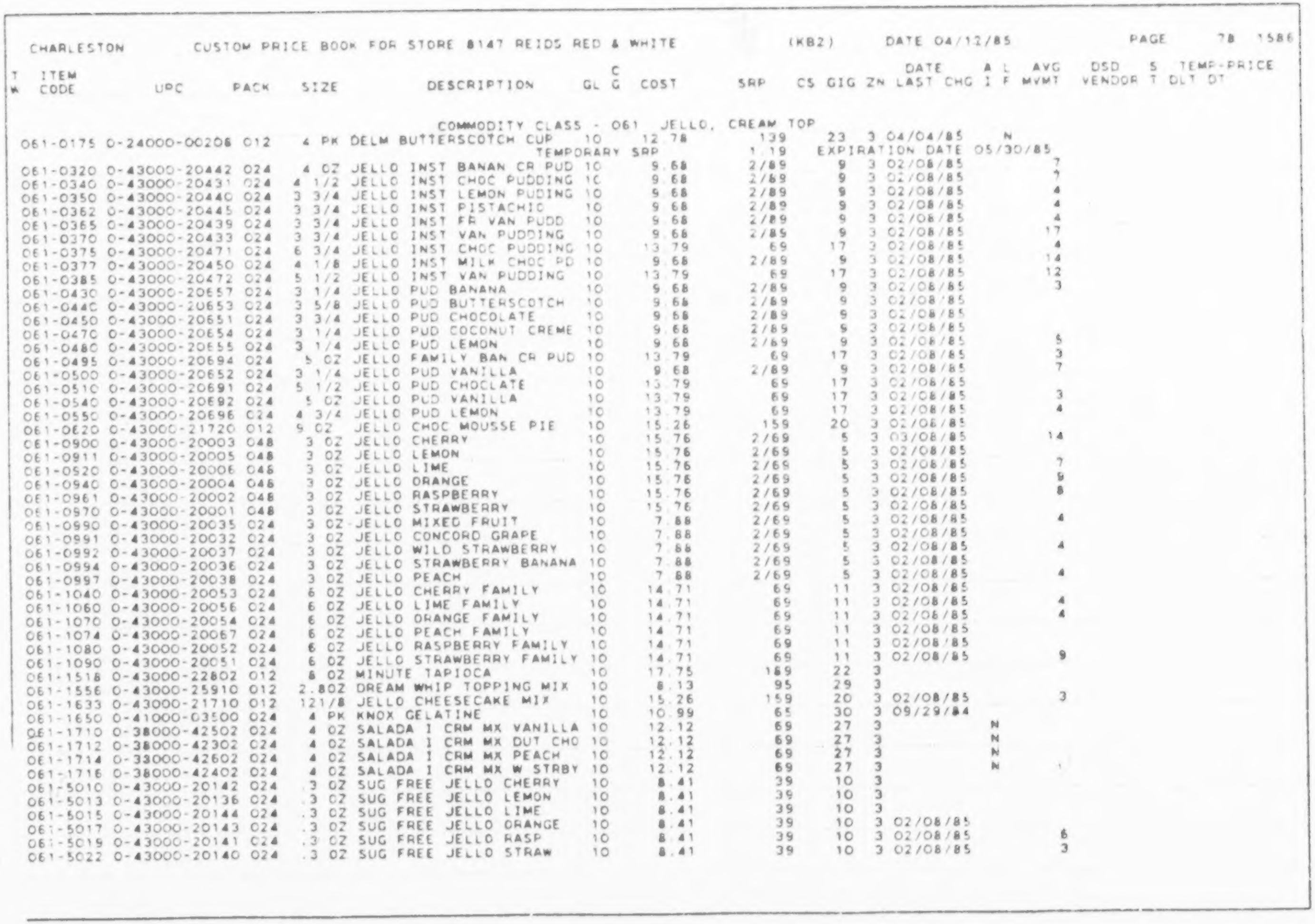

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 CHARLESTON        CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE              (KB2)     DATE 04/12/85              PAGE     78  1586
                                                                   C                                DATE     A L  AVG   DSD    S  TEMP-PRICE
T  ITEM
W  CODE         UPC      PACK   SIZE            DESCRIPTION     GL G  COST          SRP   CS GIG ZN LAST CHG I F MVMT  VENDOR T DLT DT

                                                 COMMODITY CLASS - 061  JELLO, CREAM TOP
 061-0175 0-24000-00206 012   4 PK DELM BUTTERSCOTCH CUP   10    12.78          139     23  3 04/04/85     N
                                                     TEMPORARY SRP              1.19    EXPIRATION DATE 05/30/85
 061-0320 0-43000-20442 024   4 OZ JELLO INST BANAN CR PUD 10     9.68         2/89      9  3 02/08/85          7
 061-0340 0-43000-20431 024  4 1/2 JELLO INST CHOC PUDDING 1C     9.68         2/69      9  3 02/08/85          7
 061-0350 0-43000-20440 024  3 3/4 JELLO INST LEMON PUDING 10     9.68         2/89      9  3 02/08/85          4
 061-0362 0-43000-20445 024  3 3/4 JELLO INST PISTACHIO    10     9.68         2/89      9  3 02/08/85          4
 061-0365 0-43000-20439 024  3 3/4 JELLO INST FR VAN PUDD  10     9.68         2/89      9  3 02/08/85          4
 061-0370 0-43000-20433 024  3 3/4 JELLO INST VAN PUDDING  10     9.66         2/85      9  3 02/08/85         17
 061-0375 0-43000-20471 024  6 3/4 JELLO INST CHOC PUDDING 10    13.79           69     17  3 02/08/85          4
 061-0377 0-43000-20450 024  4 1/8 JELLO INST MILK CHOC PD 10     9.68         2/89      9  3 02/08/85         14
 061-0385 0-43000-20472 024  5 1/2 JELLO INST VAN PUDDING  10    13.79           69     17  3 02/08/85         12
 061-0430 0-43000-20657 024  3 1/4 JELLO PUD BANANA        10     9.68         2/89      9  3 02/08/85          3
 061-044C 0-43000-20653 024  3 5/8 JELLO PUD BUTTERSCOTCH  10     9.66         2/69      9  3 02/08/85
 061-0450 0-43000-20651 024  3 3/4 JELLO PUD CHOCOLATE     10     9.68         2/89      9  3 02/08/85
 061-0470 0-43000-20654 024  3 1/4 JELLO PUD COCONUT CREME 10     9.68         2/89      9  3 02/08/85
 061-0480 0-43000-20655 024  3 1/4 JELLO PUD LEMON         10     9.68         2/69      9  3 02/08/85          5
 061-0495 0-43000-20694 024   5 OZ JELLO FAMILY BAN CR PUD 10    13.79           69     17  3 02/08/85          3
 061-0500 0-43000-20652 024  3 1/4 JELLO PUD VANILLA       10     9.68         2/89      9  3 02/08/85          7
 061-0510 0-43000-20691 024  5 1/2 JELLO PUD CHOCLATE      10    13.79           69     17  3 02/08/85
 061-0540 0-43000-20692 024   5 OZ JELLO PUD VANILLA       10    13.79           69     17  3 02/08/85          3
 061-0550 0-43000-20696 024  4 3/4 JELLO PUD LEMON         10    13.79           69     17  3 02/08/85          4
 061-0620 0-43000-21720 012  9 OZ  JELLO CHOC MOUSSE PIE   10    15.26          159     20  3 02/08/85
 061-0900 0-43000-20003 048   3 OZ JELLO CHERRY            10    15.76         2/69      5  3 03/08/85         14
 061-0911 0-43000-20005 048   3 OZ JELLO LEMON             10    15.76         2/69      5  3 02/08/85
 061-0520 0-43000-20006 048   3 OZ JELLO LIME              10    15.76         2/69      5  3 02/08/85          7
 061-0940 0-43000-20004 048   3 OZ JELLO ORANGE            10    15.76         2/69      5  3 02/08/85          9
 061-0961 0-43000-20002 048   3 OZ JELLO RASPBERRY         10    15.76         2/69      5  3 02/08/85          8
 061-0970 0-43000-20001 048   3 OZ JELLO STRAWBERRY        10    15.76         2/69      5  3 02/08/85
 061-0990 0-43000-20035 024   3 OZ JELLO MIXED FRUIT       10     7.88         2/69      5  3 02/08/85          4
 061-0991 0-43000-20032 024   3 OZ JELLO CONCORD GRAPE     10     7.88         2/69      5  3 02/08/85
 061-0992 0-43000-20037 024   3 OZ JELLO WILD STRAWBERRY   10     7.86         2/69      5  3 02/08/85          4
 061-0994 0-43000-20036 024   3 OZ JELLO STRAWBERRY BANANA 10     7.88         2/69      5  3 02/08/85
 061-0997 0-43000-20038 024   3 OZ JELLO PEACH             10     7.88         2/69      5  3 02/08/85          4
 061-1040 0-43000-20053 024   6 OZ JELLO CHERRY FAMILY     10    14.71           69     11  3 02/08/85
 061-1060 0-43000-20056 024   6 OZ JELLO LIME FAMILY       10    14.71           69     11  3 02/08/85          4
 061-1070 0-43000-20054 024   6 OZ JELLO ORANGE FAMILY     10    14.71           69     11  3 02/08/85          4
 061-1074 0-43000-20067 024   6 OZ JELLO PEACH FAMILY      10    14.71           69     11  3 02/08/85
 061-1080 0-43000-20052 024   6 OZ JELLO RASPBERRY FAMILY  10    14.71           69     11  3 02/08/85
 061-1090 0-43000-20051 024   6 OZ JELLO STRAWBERRY FAMILY 10    14.71           69     11  3 02/08/85          9
 061-1518 0-43000-22802 012   8 OZ MINUTE TAPIOCA          10    17.75          169     22  3
 061-1556 0-43000-25910 012  2.80Z DREAM WHIP TOPPING MIX  10     8.13           95     29  3
 061-1633 0-43000-21710 012  121/8 JELLO CHEESECAKE MIX    10    15.26          159     20  3 02/08/85          3
 061-1650 0-41000-03500 024   4 PK KNOX GELATINE           10    10.99           65     30  3 09/29/84
 061-1710 0-38000-42502 024   4 OZ SALADA I CRM MX VANILLA 10    12.12           69     27  3            N
 061-1712 0-38000-42302 024   4 OZ SALADA I CRM MX DUT CHO 10    12.12           69     27  3            N
 061-1714 0-38000-42602 024   4 OZ SALADA I CRM MX PEACH   10    12.12           69     27  3            N
 061-1716 0-38000-42402 024   4 OZ SALADA I CRM MX W STRBY 10    12.12           69     27  3            N
 061-5010 0-43000-20142 024  .3 OZ SUG FREE JELLO CHERRY   10     8.41           39     10  3
 061-5013 0-43000-20136 024  .3 OZ SUG FREE JELLO LEMON    10     8.41           39     10  3
 061-5015 0-43000-20144 024  .3 OZ SUG FREE JELLO LIME     10     8.41           39     10  3
 061-5017 0-43000-20143 024  .3 OZ SUG FREE JELLO ORANGE   10     8.41           39     10  3 02/08/85
 061-5019 0-43000-20141 024  .3 OZ SUG FREE JELLO RASP     10     8.41           39     10  3 02/08/85          6
 061-5022 0-43000-20140 024  .3 OZ SUG FREE JELLO STRAW    10     8.41           39     10  3 02/08/85          3
 CHARLESTON        CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE            (KB2)      DATE 04/12/85              PAGE      77  1585

T   ITEM                                                         U                                DATE      A L  AVG    DSD    S  TEMP-PRICE
W   CODE          UPC       PACK    SIZE           DESCRIPTION      GL  G  COST        SRP   CS GIG ZN LAST CHG  I F  MVMT   VENDOR  T  DLT DT


                                                    COMMODITY CLASS - 060  PANCAKE, BREAD
 060-0601 0-13130-00461 012   15 OZ DROMEDARY CORN BRD MIX  10      6.00          79     16   4 02/08/85
 060-0610 0-13300-52401 024    6 OZ W WHITE HUSH PUPPY MIX  10      9.15          43     11   4 02/08/85
 060-0711 0-30000-03090 012    2 LB AUNT J YELLOW CORN MEAL 10      6.00          59     15   4 02/08/85            2
 060-0715 0-30000-03400 012    2 LB AUNT-J SR WHITE MEAL    10      7.00          75     22   4 02/08/85            6
 060-0718 0-30000-03410 010    5 LB AUNT-J SR WHITE MEAL    10     12.25         143     14   4 03/29/85            3
                                                      TEMPORARY SRP            1.03    EXPIRATION DATE 04/25/85
 060-0720 0-30000-05580 010    5 LB AUNT J WH CORN MEAL MIX 10     12.25         143     14   4 03/29/85            1
                                                      TEMPORARY SRP            1.03    EXPIRATION DATE 04/25/85
 060-0723 0-30000-05570 012    2 LB AUNT J WH CORNMEAL MIX  10      7.00          75     22   4 02/08/85            3
 060-0736 0-30000-03020 012   24 OZ QUAKER YELLOW CORN MEAL 10      6.09          59     14   4              N
 060-0751 0-13300-18501 012    2 LB MARTHA WHT SR MEAL      10      7.00          69     15   4 02/08/85            7
 060-0760 0-13300-15201 010    5 LB MARTHA WHITE SR MEAL    10     12.25         129      5   4 04/04/85            4
                                                      TEMPORARY SRP             .95    EXPIRATION DATE 04/25/85
 060-0790 0-70070-50063 012    2 LB SHAWNEE SR WHITE MEAL   10      6.98          69     16   4              N
 060-0794 0-70070-50062 010    5 LB SHAWNEE S R WHITE MEAL  10     12.20         143     15   4              N
 060-0802 0-30000-04364 012    2 LB QUAKER GRITS 12  OFF    10      6.10          63      7-  4 02/08/85       N
 060-0806 0-13300-11407 012    2 LB J D MED GRITS           10      6.10          75     10   4 02/08/85            5
 060-0815 0-13300-13801 012   10 OZ J D BOIL-IN-BAG GRITS   10      7.95          73      9   4 03/29/85            1
 060-0818 0-13300-12107 024    1 LB J D QUICK GRITS         10     10.95          49      7   4 02/08/85            2
 060-0826 0-13300-12307 012    2 LB J D QUICK GRITS         10      6.10          75     10   4 02/08/85           23
 060-0834 0-13300-12407 010    5 LB J D QUICK GRITS         10     13.25          99     34-  4 02/08/85           28
 060-0836 0-13300-12507 005   10 LB J D QUICK GRITS         10     13.05         275      5   4 02/08/85            2
 060-0837 0-13300-12607 001   25 LB J D QUICK GRITS         10      6.55         689      5   4                N
 060-0838 0-30000-04150 024    1 LB QUAKER GRITS QUICK      10     10.95          49      7   4 04/04/85            8
                                                      TEMPORARY SRP              39    EXPIRATION DATE 04/25/85
 060-0842 0-30000-04180 024   1 1/2 QUAKER QUICK GRITS      10     14.45          65      7   4 02/08/85            4
 060-0844 0-30000-03970 012    8 OZ QUAKER INST GRITS W/HAM 10      9.36          89     12   4 03/29/85           10
 060-0845 0-30000-03940 012    8 OZ QUAKER INST GRITS W/BAC 10      9.36          89     12   4 03/22/85            7
 060-0846 0-30000-04360 012    2 LB QUAKER QUICK GRITS      10      6.10          75     10   4 02/08/85           29
 060-0850 0-30000-04370 010    5 LB QUAKER QUICK GRITS      10     13.25         129      3-  4 02/22/85           30
 060-0854 0-30000-04190 012   40 OZ QUAKER QUICK GRITS      10     11.00         103     11   1 02/08/85            3
 060-0855 0-30000-03960 012    8 OZ QUAKER INST GRIT W/CHEZ 10      9.36          89     12   4 03/22/85           10
 060-0856 0-30000-04020 012   24 OZ QUAKER GRITS YELLOW     10      6.75          63     11   4 02/08/85            6
 060-0862 0-30000-04060 024    8 OZ QUAKER INST GRITS       10     18.71          89     12   4 03/29/85            5
 060-0866 0-30000-04050 012   16 OZ QUAKER INST GRITS       10     13.19         123     11   4 02/08/85            3
 060-0868 0-30000-04130 010   36 OZ QUAKER INST GRITS       10     15.25         169     10   4 02/08/85            9
 060-0880 0-32500-55100 024   8-1/2 WL CORN MUFFIN MIX      10      6.66          33     16   4 02/08/85       N
 060-0884 0-32500-02381 010    5 LB WL CORNMEAL MIX SR      10     12.25         139     12   4              N
 060-0900 0-32500-02281 010    2 LB WH LILY CORNMEAL MIX SR 10      5.80          68     15   4                N
 060-1032 0-32500-03281 010    2 LB WL 3 RIV CRNMEAL MX SR  10      5.80          68     15   4 02/08/85       N    1
 060-1034 0-32500-03381 010    5 LB WL 3 RIV CRNMEAL MX SR  10     12.25         139     12   4              N
 060-1036 0-32500-03481 005   10 LB WL 3 RIV CRNMEAL MIX SR 10     12.05         269     10   4              N
 060-1040 0-13300-16107 012    2 LB J D S R MEAL            10      7.00          69     1[illegible]   4              N
 060-1059 0-71740-34102 012    2 LB TENA BAKE SR MEAL       10      6.50          63     14   4 02/08/85            3

                                                    COMMODITY CLASS - 061  JELLO, CREAM TOP
 061-0163 0-24000-00225 012    4 PK DELM CHOC FUDGE CUP     10     12.78         135     23   3 01/04/85
                                                      TEMPORARY SRP            1.19    EXPIRATION DATE 05/30/85
 061-0166 0-24000-11562 012    4 PK DM LT FRT CUP-DIC PEACH 10     12.78         139     23   3                N
 061-0168 0-24000-00231 012    4 PK DELM MIXED FRUIT CUP    10     12.78         139     23   3 02/08/85       N    2
 061-0170 0-24000-11552 012    4 PK DM LT FRT CUP-MIX FRUIT 10     12.78         139     23   3              N
 061-0171 0-24000-01056 012    4 PK DELM TAPIOCA CUP 4 PK   10     12.78         139     23   3 04/04/85
                                                      TEMPORARY SRP            1.19    EXPIRATION DATE 05/30/85
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                                                                            (KB2)     DATE 04/12/85                     PAGE     89  1597
   CHARLESTON       CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE
                                                            C                               DATE    A L   AVG    DSD     S  TEMP-PRICE
T  ITEM                                 DESCRIPTION      GL G   COST    SRP  CS GIG ZN LAST CHG I F  MVMT   VENDOR  T  DLT DT
W  CODE       UPC        PACK  SIZE

                                    COMMODITY CLASS - 068  DETERGENTS
   068-2445 0-37000-00999 060        TIDE POWDER                10  23.02     45  15  3 02/08/85       15
   068-2446 0-37000-91710 024  20 OZ UNSCENTED TIDE DETG        10  23.02    109  12  3 02/08/85        6
   068-2450 0-37000-91210 024  LARGE TIDE POWDER                10  23.02    109  12  3 02/08/85       18
   068-2466 0-37000-91700 014  49 OZ UNSCENTED TIDE DETG        10  30.70    229   4  3 04/12/85       42
                                           TEMPORARY SRP         #5          2.15  EXPIRATION DATE 05/18/85

   068-2468 0-37000-91290 014  49 OZ TIDE POWDER DETERGENT      10  30.70    229  [illegible] 3 02/08/85    30
   ~~068-2485 0-37000-91730 008  64 OZ UNSCENTED TIDE DETG        10  29.22    [illegible]~~  [illegible] 3 02/08/85     2
   068-2490 0-37000-91230 008  64 OZ TIDE POWDER DETERGENT      10  29.22    399   8  3 02/08/85        4
   068-2526 0-37000-91740 004  171OZ UNSCENTED TIDE DETG        10  29.22    793   8  3 02/08/85
   068-2530 0-37000-91240 004  171 Z TIDE POWDER DETERGENT      10  29.22    793   8  3 02/08/85        2
   068-2575 0-37000-00989 018  32 OZ LIQUID TIDE DETERGENT      10  28.67    199  10  3 02/08/85
   068-2577 0-37000-00991 009  64 OZ LIQUID TIDE DETERGENT      10  31.82    415  15  3 01/10/85
   068-2579 0-37000-00948 006  96 OZ LIQUID TIDE DETERGENT      10  33.36    643  14  3 04/12/85
   068-2582 0-37000-00946 004  128OZ LIQUID TIDE DETERGENT      10  29.48    855  14  3 04/12/85
   068-2602 0-24200-01606 024  17 OZ TREND DETERGENT            10  11.22     59  21  3 09/09/83       10
   068-2622 0-24200-01629 012  42 OZ TREND HD DETG 20C OFF      10  11.06    105  12  3           N
   068-2625 0-24200-01607 012  42 OZ TREND HC DETERGENT         10  13.46    125  10  3 02/08/85       PF
   068-2632 0-24200-01614 004  147OZ TREND HD DETERGENT         10  14.96    439  15  3 05/10/84        5
   068-2636 0-24200-01608 006  72 OZ TREND HD DETERGENT         10  14.96    219  15  3 02/08/85        3
   068-2830 0-11111-87424 024  17 OZ WISK LIQ DETERGENT REG     10  24.04    119  16  3 11/01/84        6
   068-2836 0-11111-87412 016  32 OZ WISK LIQUID DETERGENT      10  30.63    209   8  3           N
   068-2866 0-11111-87406 009  64 OZ WISK LIQUID DETERGENT      10  33.93    439  14  3 12/28/84        1
   068-2880 0-11111-87404 004  1 GAL WISK LIQUID DETERGENT      10  29.84    869  14  3           N
   068-2890 0-54600-00162 006   64 Z YES LIQ DET & FAB SOFT     10  21.31    445  20  3           N
   068-2892 0-54600-00181 012   32 Z YES LIQ DET & FAB SOFT     10  21.62    209  14  3 02/08/85        2
   068-2895 0-54600-00162 012  32 OZ YES DETERGENT 30C OFF      10  18.02    179  16  3 02/08/85   N

                                    COMMODITY CLASS - 069  HOUSE CLEANERS
   069-0216 0-28600-55126 012  2 ECH PAN HAND'LR SCOUR PADS     10   9.46    109  28  3 04/04/85
                                           TEMPORARY SRP                      99  EXPIRATION DATE 05/02/85

   069-0258 0-54600-00086 012  22 OZ TEXIZE GLASS PLUS          10  14.19    149  21  3 02/08/85        3
   069-0259 0-54600-00087 012  32 OZ TEXIZE GLASS PLUS REFIL    10  13.19    139  21  3 02/08/85        2
   069-0260 0-19800-00025 012  15 OZ WINDEX AEROSOL             10  14.32    159  25  3 02/08/85
   069-0270 0-19800-00022 024   8 OZ WINDEX WITH SPRAYER        10  18.63    103  24  3 02/08/85
   069-0275 0-19800-00023 012  12 OZ WINDEX PLAS BTL W/PUMP     10  11.26    123  24  3 02/08/85        3
   069-0287 0-19800-00026 012  32 OZ WINDEX REFILL              10  14.46    163  26  3 04/04/85        2
                                           TEMPORARY SRP                    1.49  EXPIRATION DATE 04/25/85

   069-0289 0-19800-00027 012  22 OZ WINDEX TRIGGER SPRAYER     10  15.90    165  20  3 02/08/85        3
   069-0318 0-41547-99999 012  32 OZ DIXIE DAU AMONIA SUDSY     10   3.35     41  32  3
   069-0330 0-17000-00851 012  28 OZ PARSONS SUDSY AMMONIA      10   5.10     59  28  3 02/08/85        2
   069-0335 0-17000-00853 012  28 OZ PARSONS AMMONIA CLEAR      10   5.10     59  28  3 02/08/85        2
   069-0337 0-17000-00855 012  28 OZ PARSONS LEMON AMMONIA      10   5.10     59  26  3 02/08/85        2
   069-0340 0-17000-00850 009  56 OZ PARSONS SUDSY AMMONIA      10   6.97     99  22  3 02/08/85        2
   069-0375 0-17000-00852 024  15 OZ PARSONS AMMONIA            10   6.68     37  25  3
   069-0392 0-35000-36108 030  22 OZ AJAX CLEANSER 8C           10  15.89     67  21  3 02/08/85   N
   069-0401 0-35000-36006 048    REG AJAX CLEANSER 6C OFF       10  17.32     47  23  3 02/08/85   N
   069-0410 0-35000-05411 012  GIANT AJAX ALL PURPOSE CLEAN     10  20.36    229  26  3 07/14/83        2
   069-0426 0-44600-00021 009  26 OZ SOFT SCRUB CLEANSER        10  13.95    193  20  3 02/08/85   N    3
   069-0429 0-44600-00059 006  39 OZ SOFT SCRUB                 10  13.06    273  20  3           N
   069-0440 0-71618-11626 009  26 OZ SHINEY SINKS               10  12.69    179  21  3
   069-0441 0-71618-11600 012  13 OZ SHINEY SINKS               10   9.00    103  27  3
   069-0444 0-72833-80540 012  20 OZ SHINE KIT & BTHRM CLNR     10  14.72    159  23  3 02/22/85
   069-0448 0-32201-00002 012  17 OZ TOUGH ACT BATH CLNR        10  17.86    199  25  3           N
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 CHARLESTON      CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE         (KB2)     DATE 04/12/85          PAGE     90  1596

T   ITEM                                                          C                                DATE     A L  AVG   DSD    S  TEMP-PRICE
W   CODE          UPC      PACK   SIZE        DESCRIPTION     GL  G  COST        SRP   CS GIG ZN LAST CHG I F MVMT  VENDOR T DLT DT


                                       COMMODITY CLASS - 069  HOUSE CLEANERS
069-0449 0-25700-00501 012  20 4Z DOW BTHRM CLNR BONUS    10      14.55       165   27  3 03/08/85    N
069-0451 0-25700-00510 012  17 OZ DOW BATHROOM CLNR SPRAY 10      14.55       165   27  3 02/08/85         2
069-0455 0-72833-31360 012  20 OZ TILE PLUS STAIN REMOVER 10      15.84       179   26  3 02/22/85
069-0467 0-54600-00307 012  22 OZ GREASE RELIEF SQUEEZE   10      13.41       159   30  3 10/26/84
069-0481 0-54600-00052 012  32 OZ JANITOR IN DRUM CLEANER 10      10.90       127   28  3 04/04/85
069-0500 0-37000-00622 012  28 OZ MR CLEAN LIQUID         10      20.46       199   14  3 02/08/85         3
069-0501 0-37000-00639 012  26 OZ MR CLEAN 25C OFF        10      17.05       174   18  3                N
069-0507 0-37000-33520 012  15 OZ MR CLEAN LIQUID         10      11.24       119   21  3              N
069-0510 0-37000-00652 012  GIANT TOP JOB CLEANER         10      21.46       209   14  3 02/08/85         1
069-0516 0-37000-00677 012  28 OZ TOP JOB CLEANER 25  OFF 10      18.42       185   17  3 03/29/85    N
069-0529 0-15200-02261 012  15 OZ LYSOL DEODORIZING CLNR  10      11.16       119   22  3 02/08/85         2
069-0530 0-19200-02261 012  15 OZ LYSOL DEOD CLEANER PP99 10      11.16        99    6  3                N
069-0545 0-54600-00282 012  22 OZ FANTASTIK CLNR W/TRIGER 10      14.40       149   19  3 02/08/85
069-0548 0-54600-00265 009  44 OZ FANTASTIK REFILL        10      13.83       195   21  3 02/08/85         1
069-0553 0-54600-00077 012  16 OZ FANTASTIK BATHROOM CLNR 10      13.99       139   16  3 04/12/85
069-0555 0-51700-33246 012  16 OZ SCRUB FREE BATH CLEANER 10      18.38       207   26  3                N
069-0564 0-54600-00345 012  22 OZ PINE MAGIC SPRAY CLEANR 10      15.36       149   14  3 04/04/85
069-0573 0-54600-00407 012  28 OZ TEXIZE PINE CLEANER     10      14.31       149   20  3 02/08/85
069-0575 0-54600-00417 012  28 OZ TEXIZE SPRING CLEANER   10      14.31       149   20  3 02/08/85         1
069-0577 0-54600-00126 008  40 OZ TEXIZE PINE POWER       10      20.73       323   20  3 02/08/85         2
069-0582 0-44600-00628 012  22 OZ FORMULA 409 SPRAY TRIGG 10      14.50       139   13  3 02/08/85         5
069-0588 0-44600-00604 006  64 OZ FORMULA 409 CLNR REFILL 10      18.76       299   22  3 02/08/85
069-0594 0-44600-03702 006  64 OZ TACKLE CLEANER          10      13.35       279   20  3 04/04/85
                                                  TEMPORARY SRP          2.65   EXPIRATION DATE 05/16/85
069-0595 0-44600-03701 012  26 OZ TACKLE CLEANER          10      11.92       129   23  3 03/08/85
069-0610 0-37000-34020 024    REG SPIC & SPAN             10      20.17       105   20  3 02/08/85         3
069-0619 0-37000-34033 024  16 OZ SPIC & SPAN 20C OFF     10      15.37        85   25  3                N
069-0626 0-37000-34060 012  32 OZ SPIC & SPAN             10      19.81       199   17  3 02/08/85         1
069-0631 0-37000-00782 012  15 OZ SPIC & SPAN PINE CLEANR 10      12.15       129   22  3
069-0634 0-37000-00753 012  15 OZ SPIC & SPAN PINE 30C    10       8.55        99   28  3                N
069-0648 0-46500-00612 012  28 OZ JOHNSON CLEAN N CLEAR   10      19.06       223   29  3 04/12/85
069-0657 0-71121-00120 012  15 OZ PINE TUFF CLNR&DISINFEC 10      10.92       113   19  3              N
069-0660 0-19200-02836 012   6 OZ LYSOL SPRAY SCENT II    10      16.32       175   22  3 03/29/85         1
069-0662 0-19200-02845 012  12 OZ LYSOL SPRAY SCENT II    10      26.04       269   19  3 04/04/85         2
069-0669 0-19200-02524 012  17 OZ LYSOL BASIN-TUB-TILE CL 10      14.40       149   19  3 03/08/85         2
069-0680 0-19200-02215 012   5 OZ LYSOL LIQUID            10      10.68       115   23  3 02/08/85         3
069-0689 0-19200-02291 012  12 OZ LYSOL SPRAY DISINFECTNT 10      26.04       269   19  3 03/29/85         2
069-0695 0-19200-02121 012  16 OZ LYSOL SPRAY DISINFECTNT 10      34.20       369   23  3 03/29/85         2
069-0698 0-19200-02262 012  28 OZ LYSOL DISINFECT CLEANER 10      20.40       219   22  3 03/08/85
069-0701 0-19200-02100 012   6 OZ LYSOL SPRAY DISINFECTNT 10      16.32       175   22  3 03/29/85         3
069-0720 0-76061-22015 012  15 OZ PINE GLO CLEANER        10       6.48        75   28  3 08/11/83         4
069-0721 0-76061-22028 012  28 OZ PINE GLO CLEANER        10       6.91       109   32  3 12/30/82         6
069-0723 0-41294-40135 024   6 OZ PINE SOL ORIGINAL       10      12.84        69   22  3 02/08/85        12
069-0725 0-41294-40165 012  15 OZ PINE SOL ORIGINAL       10      13.68       129   12  3 02/08/85         6
069-0726 0-40133-41294 024   6 OZ PINE SOL CLEANER PP59C  10      12.84        59    9  3                N
069-0743 0-54600-00033 024   6 OZ TEX PINE POWER DISINFEC 10      12.91        75   28  3 02/08/85         8
069-0744 0-54600-00039 024  15 OZ TEX PINE POWER DISINFEC 10      25.43       139   24  3 03/22/85         8
                                                  TEMPORARY SRP          1.15   EXPIRATION DATE 05/09/85
069-0746 0-54600-00121 012  28 OZ TEX PINE POWER DISINFEC 10      23.26       239   19  3 02/08/85         5
069-0749 0-24200-12700 012    2'S BRILLO PADDY            10       6.36        75   29  3
069-0750 0-24200-03018 024   4 CT BRILLO PADS RED BOX     10       7.20      2/89   33  3 05/03/84
069-0760 0-24200-03002 024  10 CT BRILLO PADS RED BOX     10      15.61        85   23  3 02/08/85         4
069-0767 0-24200-11600 024  001'S BRILLO NYLOR SCRUBBER   10       5.28      2/63   30  3 03/03/83         3

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                                                                                       (KB2)    DATE 04/12/85          PAGE     91  1599
CHARLESTON       CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE
                                                                                                  DATE    A L  AVG   DSD    S  TEMP-PRICE
                                                           C
T  ITEM                                                                      SRP   CS GIG ZN LAST CHG I F  MVMT  VENDOR T  DLT DT
W  CODE       UPC        PACK  SIZE      DESCRIPTION       GL G  COST

                                  COMMODITY CLASS - 069  HOUSE CLEANERS
069-0770 0-16500-98041 024  4 CT SOS PADS MEDIUM           10    7.28   2/85  29  3 03/10/83       4
069-0775 0-16500-98021 024 18 CT SOS PADS                  10   25.39    149  29  3 03/01/84   N
069-0790 0-16500-98032 036 10 CT SOS PADS MEDIUM           10   23.42     95  32  3 03/01/84       8
069-0792 0-16500-98300 012  EACH SOS OVEN CLEANING PAD     10   11.09    129  28  3 12/13/84       2
069-0804 0-26600-52117 012    CT CHORE BOY KITCHEN SPONG   10    4.65     57  32  3 12/10/82
069-0806 0-26600-52377 012    CT CHORE BOY TEFLON SPONGE   10    4.65     53  27  3 10/28/82
069-0821 0-53200-07215 024  1 PK O-CEL-O COOKWARE SPONGE   10    7.66     49  35  3          N
069-0822 0-53200-07216 024  1 PK O-CEL-O KITCHEN SPONGE    10    7.68     49  35  3          N
069-0823 0-53200-07224 024  2 PK O-CEL-O MEDIUM SPONGE     10    8.32     53  35  3
069-0824 0-53200-07210 012 1 PAK O-CEL-O SCRUB A DOUBLE    10    6.60     85  35  3          N
069-0825 0-53200-07266 024  1 PK O-CEL-O LARGE SPONGE      10   14.46     89  32  3          N
069-0826 0-53200-07274 024  4 PK O-CEL-O HANDY 4 PK SPON   10   11.66     73  33  3          N
069-0827 0-53200-07244 024  2 PK O-CEL-O UTILITY SPONGE    10   14.46     89  32  3          N
069-0828 0-53200-07288 024  6 PK O-CEL-O HANDY 6PK SPONG   10   15.60    105  38  3          N
069-0829 0-53200-07007 024  7 PK O-CEL-O SPONGERAMA        10   18.96    125  37  3          N
069-0830 0-53200-07206 012   1'S O-CEL-O TUB & SINK SPNG   10    5.28     65  32  3
069-0831 0-53200-07219 084   1'S O-CEL-O CAR&BOAT SPN SH   10   89.98    119  30  3          N
069-0844 0-26600-30316 012  2 CT CHORE BOY SCOUR CLOTH     10    5.75     69  31  3 10/28/82
069-0846 0-21200-00000 012    1S SCOTCH BRITE KITCHEN      10    4.68     55  29  3 01/20/84
069-0845 0-21200-01000 024    CT SCOTCH BRITE SCOUR PADS   10    6.46     39  31  3 01/20/84
069-0865 0-21200-01003 012 3 PAD RESCUE II SOAP PADS       10    8.16     99  31  3 12/13/84
069-0890 0-24200-03500 024  6 CT STEEL WOOL PADS           10    7.32     43  29  3          N
069-0896 0-24200-17100 009 40 OZ DUTCH ALL PURPOSE CLNR    10   15.62    219  21  3 02/28/85
069-0914 0-26600-11126 024  2 CT CHORE BOY COPPER PUFF     10   14.14     83  29  3          N
069-0915 0-26600-61271 036       CHORE BOY KNOB POT CLNR   10   15.57     55  27  3
069-0920 0-26600-11020 036       CHORE BOY COPPER PUFFS    10   12.85  2/100  29  3 10/28/82      14
069-0980 0-11121-00012 012  8 OZ WRIGHTS SILVER CREAM      10   12.12    139  27  3 01/03/85       1
069-0984 0-11121-00028 006  7 OZ WRIGHT ANTI-TARN SILVER   10   10.14    229  26  3 01/03/85
069-0988 0-41500-06390 072 2-1/2 FRENCH DURA GLIT          10  103.20    199  28  3          N
069-0992 0-11121-00047 012 12 OZ WRIGHTS BRASS CLEANER     10   13.80    169  32  3 01/03/85
069-0997 0-41500-06200 012  8 OZ BRASSO METAL POLISH       10   12.14    145  30  3 03/14/85       1
069-1006 0-11121-00043 012  9 OZ WRIGHTS COPPER CLEANER    10   12.12    139  27  3 01/03/85
069-1030 0-62338-00710 012  6 OZ ZUD STAIN REMOVER         10    6.92     79  27  3 02/08/85       1
069-1090 0-35000-36000 048 14 OZ AJAX CLEANSER             10   20.20     53  21  3 02/08/85      19
069-1130 0-35000-36100 030 22 OZ AJAX CLEANSER             10   18.29     75  19  3 02/08/85      23
069-1142 0-44600-00020 012 13 OZ CLOROX SOFT SCRUB         10   10.[illegible]    109  22  3 02/08/85       4
069-1147 0-44600-01100 012 16 OZ CLOROX TILE MILDEW RMVR   10   18.81    209  25  3 02/08/85       2
069-1150 0-37000-00591 048 14 OZ COMET CLEANSER            10   20.29     53  20  3 02/08/85      26
069-1160 0-37000-00592 030 21 OZ COMET CLEANSER            10   18.38     79  22  3 02/08/85      14
069-1170 0-37000-00593 040 17 OZ COMET CLEANSER DECORATR   10   23.69     73  19  3 02/08/85       5
069-1194 0-37000-00614 030 21 OZ COMET BC OFF              10   15.98     71  25  3 02/08/85   N
069-1250 0-19800-00145 012  8 OZ MR MUSCLE OVEN CLEANER    10   12.42    149  31  3 02/08/85       2
069-1264 0-33200-05030 012 16 OZ A&H OVEN CLEANER          10   14.35    159  25  3
069-1272 0-25700-00430 012 16 OZ DOW OVEN CLEANER          10   15.07    169  26  3 03/29/85       2
                                         TEMPORARY SRP                  1.29  EXPIRATION DATE 05/02/85
069-1275 0-62338-00142 012  8 OZ EASY OFF OVEN SPRAY LEM   10   13.33    149  25  3 02/08/85       1
069-1280 0-62338-00132 012  8 OZ EASY OFF OVEN SPRAY       10   13.33    149  25  3 02/08/85       2
069-1284 0-62338-00180 012 16 OZ EASY OFF OVN CLNR W/SPR   10   22.67    255  26  3 02/08/85       1
069-1285 0-62338-00138 012 16 OZ EASY OFF SPRAY OVEN CLN   10   21.16    239  26  3 03/22/85       2
                                         TEMPORARY SRP                  2.19  EXPIRATION DATE 04/18/85
069-1331 0-50700-01483 012 14 OZ R&W CARPET & ROOM DEOD    10   11.02    135  32  3 02/22/85       4
069-1334 0-33200-11320 012 21 OZ A&H CARP FR LIGHT SCENT   10   14.85    175  29  3 01/10/85       1
069-1337 0-33200-11330 012 21 OZ A&H FLORAL SCNT CRP DEO   10   14.85    175  29  3 02/22/85       2
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  CHARLESTON       CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE           (KB2)     DATE 04/12/85            PAGE     92  1600

T  ITEM                                                        C                             DATE     A L AVG    DSD  S  TEMP-PRICE
W  CODE        UPC     PACK   SIZE         DESCRIPTION     GL  G  COST      SRP   CS GIG ZN LAST CHG  I F MVMT VENDOR T DLT DT

                                            COMMODITY CLASS - 069  HOUSE CLEANERS
 069-1339 0-33200-11340 012  30 CT A&H CARPET DEO SCENTED  10     19.83       219    25  3            N
 069-1345 0-62338-06210 012  20 OZ WOOLITE FOAM RUG CLEARN 10     28.19       309    24  3 02/08/85
 069-1347 0-62338-06220 012  22 OZ WOOLITE SP SELF-CLN RUG 10     28.19       309    24  3 02/08/85          3
 069-1353 0-62338-06240 012  14 OZ WOOLITE UPHOLSTERY CLNR 10     27.16       295    24  3 02/08/85
 069-1367 0-11127-00601 012  22 OZ RESOLVE CARPET CLEANER  10     28.98       319    24  3            N
 069-1370 0-46500-00711 012  24 OZ JOHNSON GLORY RUG CLEAN 10     27.89       319    27  3 03/29/85          2
 069-1377 0-19200-06609 012  14 OZ LOVE MY CARPET REGULAR  10     22.10       239    23  3
 069-1383 0-19200-06632 012  14 OZ LOVE MY CARPET SOFT     10     22.10       239    23  3
 069-1369 0-26600-73524 012  14 OZ CARPET FRESH SMOKE OUT  10     22.10       259    29  3 04/04/85
                                                       TEMPORARY SRP         2.33   EXPIRATION DATE 05/02/85
 069-1390 0-26600-73500 012   9 OZ AIRWICK CARPET FRESH    10     14.70       159    23  3 04/04/85          1
                                                       TEMPORARY SRP         1.45   EXPIRATION DATE 05/02/85
 069-1391 0-26600-73517 012   9 OZ AIRWICK CARPET FRSH II  10     14.70       159    23  3 04/04/85          2
                                                       TEMPORARY SRP         1.45   EXPIRATION DATE 05/02/85
 069-1392 0-26600-73502 012  14 OZ AIRWICK CARPET FRESH    10     22.10       259    29  3 04/04/85          3
                                                       TEMPORARY SRP         2.33   EXPIRATION DATE 05/02/85
 069-1395 0-26600-41012 012  15.5Z GLAMORENE RUG FRESH     10     11.16       119    22  3            N
 069-1396 0-26600-41014 012  15.5Z GLAMORENE POWDER FRESH  10     11.16       125    26  3            N
 069-1398 0-21200-01685 012  16.5Z SCOTCHGUARD CARPET CLNR 10     27.38       325    30  3 03/08/85
 069-1407 0-54600-00068 012   6 OZ KZR SPOTLIFTER AEROSOL  10     17.93       209    29  3
 069-1432 0-41251-00005 012  14 OZ GOOP-HAND CLEANER       10      9.60       109    27  3
 069-4002 0-72833-90740 012  14 OZ FRSH N VAC CARPET FRESH 10      9.20       109    30  3 02/22/85

                                            COMMODITY CLASS - 070  STARCH, FAB SOFT
 070-0100 0-46500-00551 012  4.5OZ GLADE FAB FRS SPR CLEAN 10     11.52       129    26  3            N
 070-0105 0-46500-00552 012  4.5OZ GLADE FAB FR ULTR FRESH 10     11.52       129    26  3            N
 070-0230 0-62338-00210 012  15 OZ EASY ON SPRAY STARCH    10      9.27       105    26  3 02/08/85          2
 070-0250 0-62338-00215 012  22 OZ EASY ON SPRAY STARCH    10     11.34       125    24  3 02/08/85          2
 070-0265 0-22400-00441 012   6 OZ STATIC GUARD            10     24.77       285    28  3 10/19/84          3
 070-0300 0-48001-08510 012  15 OZ NIAGARA SPRAY STARCH    10      9.27        99    22  3 02/08/85          5
 070-0310 0-48001-08520 012  22 OZ NIAGARA SPRAY STARCH    10     11.20       119    22  3 02/08/85          8
 070-0640 0-24200-13200 012  22 OZ STA FLO SPRAY STARCH    10     10.32       113    24  3 02/08/85
 070-0684 0-24200-13100 012     QT STA-FLO LIQUID STARCH   10      8.52        95    25  3 02/09/85          2
 070-0744 0-54600-00014 012  16 OZ TEXIZE SPRAY N STARCH   10      9.81       109    25  3 06/01/84          3
 070-0755 0-48001-08350 024   1-LB ARGO GLOSS STARCH       10     12.53        75    30  3 11/10/83
 070-0765 0-50700-01474 006  1 GAL R&W FABRIC SOFTNER      10      5.03        99    15  3 02/08/85          5
 070-0773 0-50700-01476 008  1/2GL R&W FABRIC SOFTNER      10      4.37        69    21  3 02/08/85          1
 070-0780 0-37000-00681 024  17 OZ DOWNY FABRIC SOFTNER    10     16.72        85    18  3 02/08/85         14
 070-0790 0-37000-00682 012  33 OZ DOWNY FABRIC SOFTNER    10     14.19       139    15  3 02/08/85         11
 070-0796 0-37000-35586 006  32 OZ DOWNY TRIPLE CONCENTRAT 10     17.29       339    15  3            N
 070-0797 0-37000-35500 006  96 OZ DOWNY FAB SOFTENER      10     19.79       375    12  3            N
 070-0810 0-37000-35590 008  21.5Z DOWNY TRIPLE CONCENTRAT 10     15.63       243    20  3 02/08/85          2
 070-0811 0-37000-35510 008  64 OZ DOWNY FABRIC SOFTENER   10     19.88       259    14  3            N
 070-0824 0-41547-66664 012  32 OZ CLO WHITE FABRIC SOFTNR 10      4.30        45    20  3 02/08/85          3
 070-0826 0-41547-66665 008  64 OZ CLO WHITE FLUFFY RINSE  10      4.65        79    26  3 02/08/85          2
 070-0827 0-41547-66666 006  1 GAL CLO WHITE FABRIC SOFTNR 10      5.65       115    18  3 02/08/85          3
 070-0840 0-11111-58413 012  33 OZ FINAL TOUCH FAB SOFTNER 10     14.35       139    14  3 02/08/85
 070-0846 0-51700-39305 012  1.2OZ FREE N' SOFT            10     21.93       235    22  3
 070-0853 0-37000-00691 024  10 CT BOUNCE FABRIC SOFTENER  10     14.42        75    20  3 02/08/85          3
 070-0855 0-37000-00692 012  20 CT BOUNCE FABRIC SOFTENER  10     12.49       119    13  3
 070-0860 0-37000-36020 012  40 CT BOUNCE FAB SOFT         10     24.18       239    16  3 02/08/85
 070-0871 0-53100-22280 006  36 CT CLING FREE SHEET FAB SF 10     11.05       225    18  3 02/08/85          1
 070-0872 0-53100-22260 010     24 CLING FREE SHEET FAB SF 10     12.87       159    19  3 02/08/85          2
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FORM WBL2DP

CHARLESTON CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE IKB2 DATE 04/12/85 PAGE 63 15

T W	ITEM CODE	UPC	PACK	SIZE	DESCRIPTION	GL	C G	COST	SRP	CS	GIG	ZN	DATE LAST CHG	A I	L F	AVG MVMT	DSD VENDOR	S T	TEMP-PRICE DLT DT
					COMMODITY CLASS - 046 CATSUP														
	046-0340	0-13000-00124	024	14 OZ	HEINZ CATSUP	10		16.30	79	14		4	02/08/85			6			
	046-0344	0-13000-00128	024	28 OZ	HEINZ SQUEEZE KETCHUP	10		33.24	149	7		4	02/08/85			5			
	046-0363	0-13000-00125	012	32 OZ	HEINZ KEG O KETCHUP	10		16.90	115	22-		4	02/08/85						
	046-0367	0-13000-00107	012	44 OZ	HEINZ CATSUP	10		22.54	219	14		4	02/08/85						
	046-0375	0-13000-00165	012	14 OZ	HEINZ HOT KETCHUP	10		8.14	79	14		4	02/08/85			2			
	046-0392	0-27000-38234	024	14 OZ	HUNTS JUG KETCHUP	10		15.59	77	16		4	02/08/85			6			
	046-0394	0-27000-38249	015	24 OZ	HUNT CATSUP JUG	10		16.13	115	6		4	02/08/85						
	046-0408	0-27000-38256	012	32 OZ	HUNT CATSUP	10		16.42	105	* 30-		4	12/13/84			73			
	046-0410	0-27000-38244	012	44 OZ	HUNTS KETCHUP	10		21.90	209	13		4	02/08/85			5			
					COMMODITY CLASS - 047 SYRUPS														
	047-0180	0-50700-01389	012	24 OZ	R&W PANCAKE SYRUP	10		8.43	99	21		3	02/08/85						
	047-0223	0-75200-00914	012	19 OZ	CANE PATCH SYRUP	10		12.05	129	22		3	02/08/85			4			
	047-0224	0-75200-00906	012	2 1/2	CANE PATCH SYRUP	10		13.90	155	25		3	09/06/84			7			
	047-0225	0-75200-00912	012	12 OZ	CANE PATCH SYRUP GLASS	10		6.50	89	20		3	03/14/85			2			
	047-0226	0-75200-00905	006	5 LB	CANE PATCH SYRUP	10		13.20	285	23		3	11/29/84			10			
	047-0228	0-30000-05950	024	12 OZ	AUNT JEMIMA SYRUP	10		26.26	145	19		3	02/08/85			[illegible]			
	047-0229	0-30000-05800	012	24 OZ	AUNT JEMIMA LITE SYRUP	10		22.36	229	19		3	02/08/85			[illegible]			
	047-0230	0-30000-05970	012	24 OZ	AUNT JEMINA SYRUP	10		21.16	215	19		3	02/08/85			[illegible]			
	047-0240	0-75200-00976	012	24 OZ	FLAP JACK SYRUP	10		9.15	99	23		3	02/08/85			[illegible]			
	047-0267	0-75200-00946	012	16 OZ	OH BOY SYRUP	10		5.90	65	24		3	02/08/85			3			
	047-0269	0-75200-00943	006	5 LB	OH BOY SYRUP BLD GLS	10		6.20	185	26		3	12/06/84			5			
	047-0274	0-41490-00122	012	32 OZ	BOB WHITE CRYS WHT SYRP	10		13.70	143	20		3		N		6			
	047-0300	0-48001-05010	024	16 OZ	KARO BLUE LABEL SYRUP	10		20.49	119	28		3							
	047-0330	0-48001-05110	024	16 OZ	KARO RED LABEL SYRUP	10		20.49	119	28		3	02/10/83						
	047-0340	0-48001-05140	012	32 OZ	KARO RED LABEL SYRUP	10		20.13	209	20		3	02/08/85						
	047-0360	0-48001-05220	024	16 OZ	KARO GRN LABEL SYRUP	10		15.77	119	31		3	09/06/84						
	047-0392	0-43000-00036	024	12 OZ	LOG CABIN SYRUP-PLS BTL	10		26.46	145	16		3	02/08/85						
	047-0400	0-43000-00037	012	24 OZ	LOG CABIN SYRUP	10		22.56	233	19		3	03/29/85			4			
	047-0410	0-43000-00066	012	24 OZ	L-CABIN CTRY KIT SYP-PL	10		17.11	165	18		3	03/29/85			[illegible]			
	047-0415	0-43000-00047	012	24 OZ	LOG CABIN BUTTERED SYRP	10		22.56	229	18		3	03/08/85			[illegible]			
	047-0430	0-11115-79129	012	24 OZ	MRS BUTTERWORTH SYRUP	10		22.51	229	16		3	02/08/85			[illegible]			
	047-0434	0-11115-79224	012	12 OZ	MRS BUTTERWORTH SYRUP	10		14.28	149	20		3	02/08/85			[illegible]			
	047-0471	0-24200-13707	012	12 OZ	STALEY SYRUP PF 89C	10		9.16	89	14		3				[illegible]			
	047-0472	0-24200-13708	012	24 OZ	STALEY SYRUP PF 1.39	10		15.21	139	9		3				[illegible]			
	047-0503	0-14800-71124	012	12 OZ	GRANDMAS MOLASSES	10		13.36	155	28		3	12/13/84			2			
	047-0535	0-77493-00009	012	8 OZ	REYNOLDS PURE MAPLE SYP	10		20.63	239	28		3							
					COMMODITY CLASS - 048 JAMS JELLIES														
	048-0212	0-50700-00388	012	12 OZ	R&W PEANUT BUTTER SMOTH	10		5.54	99	20		3	02/14/85			3			
	048-0221	0-50700-02371	012	18 OZ	R&W PEANUT BUTTER SMOTH	10		12.67	139	24		3	02/22/85			8			
	048-0223	0-50700-02382	012	18 OZ	R&W CRUNCH PEANUT BUTTR	10		~~12.67~~	139	24		3	02/22/85			4			
	~~048-0225~~	~~0-50700-02372~~	~~012~~	28 OZ	R&W PEANUT BUTTER SMOTH	10		20.09	~~155~~	16		3	02/14/85						
	048-0227	0-41270-93478	006	40 OZ	R&W PEANUT BUTTER SMOTH	10		13.98	279	16		3	02/14/85			1			
	048-0240	0-37000-00406	024	12 OZ	JIF CREAMY PNUT BUTTER	10		24.91	129	20		3	02/08/85			6			
	048-0250	0-37000-00407	012	18 OZ	JIF CREAMY PNUT BUTTER	10		18.11	175	14		3	02/08/85			5			
	048-0255	0-37000-00408	012	28 OZ	JIF CREAMY PNUT BUTTER	10		27.78	273	13		3	02/08/85			3			
	048-0257	0-37000-00412	006	40 OZ	JIF CREAMY PNUT BUTTER	10		25.77	389	17		3		N					
	048-0260	0-37000-00409	024	12 OZ	JIF CRUNCH P NUT BUTTER	10		24.91	129	20		3	02/08/85						
	048-0271	0-37000-00410	012	18 OZ	JIF CRUNCH P NUT BUTTER	10		18.11	175	14		3	02/08/85			2			
	048-0300	0-45300-00030	024	12 OZ	P PAN SMOOTH PNUT BUTER	10		24.91	125	17		3	02/08/85			6			
	048-0305	0-45300-00010	024	6 OZ	P-PAN SMOOTH PNUT BUTTR	10		15.40	79	19		3	02/08/85			2			
	048-0310	0-45300-00040	012	18 OZ	P PAN SMOOTH PNUT BUTER	10		18.11	179	16		3	02/08/85			8			

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 CHARLESTON        CUSTOM PRICE BOOK FOR STORE 6147 REIDS RED & WHITE          (KB2)     DATE 04/12/85              PAGE    64  1572
T  ITEM                                                        C                                    DATE      A L  AVG   DSD     S TEMP-PRICE
W  CODE           UPC       PACK  SIZE      DESCRIPTION        GL G  COST        SRP    CS GIG ZN LAST CHG  I F MVMT  VENDOR  T DLT DT

                                                  COMMODITY CLASS - 048  JAMS JELLIES
048-0320 0-45300-00050 012  28 OZ P PAN SMOOTH PNUT BUTER 10    27.76        273    15  3 02/08/85       1
048-0322 0-45300-00060 008  40 OZ P PAN SMOOTH PNUT BUTER 10    25.77        389    17  3 02/08/85
048-0340 0-45300-00035 024  12 OZ P PAN CRUNCH PNUT BUTER 10    24.91        125    17  3 02/08/85       3
048-0345 0-45300-00045 012  18 OZ P PAN CRUNCH PNUT BUTER 10    16.11        179    16  3 02/08/85       2
048-0350 0-45300-00055 012  28 OZ P PAN CRUNCH PNUT BUTER 10    27.76        273    15  3 02/08/85
048-0355 0-45300-00006 012   8 OZ P PAN PNUT BTR LOW-SOD  10    11.74        129    24  3 02/08/85
048-0357 0-45300-00006 012  18 OZ P-PAN PNUT BTR LOW-SOD  10    18.11        193    22  3 09/06/84
048-0360 0-26565-01212 012  12 OZ SUPERMAN CRMYI PNT BUTT 10    11.63        115    16  3 02/08/85
048-0364 0-26565-01616 012  18 OZ SUPERMAN CRMY PNT BUTTR 10    16.87        159    12  3 04/12/85
                                                        TEMPORARY SRP       1.39  EXPIRATION DATE 05/09/85
048-0366 0-26565-01856 012  18 OZ SPRMAN CRNCH PNUT BUTTR 10    16.87        159    12  3 04/12/85
                                                        TEMPORARY SRP       1.39  EXPIRATION DATE 05/09/85
048-0402 0-41259-21150 012  18 OZ BAMA PNUT BUTTER/JELLY  10    16.87        173    19  3 02/08/85       2
048-0539 0-18700-00025 012  12 OZ SUE BEE HONEY SQUEEZE   10    11.95        129    23  3 02/08/85
048-0542 0-18700-00002 024   8 OZ SUE BEE STRAINED HONEY  10    16.55         95    27  3 02/08/85       3
048-0543 0-18700-00007 012  24 OZ SUE BEE PURE NAT HONEY  10    20.50        219    22  3 02/08/85
048-0546 0-18700-00005 012  16 OZ SUE BEE STRAINED HONEY  10    14.50        165    27  3 02/08/85       3
048-0553 0-18700-00019 012   1 LB AUNT SUES RAW HONEY     10    14.50        169    29  3 02/08/85
048-0755 0-41259-21203 012  10 OZ BAMA GRAPE JAM          10     7.24         79    24  3           N
048-1048 0-21000-65448 012   2 LB KRAFT APPLE JELLY       10    15.64        169    23  3 03/29/85
048-1050 0-21000-65438 012  18 OZ KRAFT JELLY APPLE       10    10.68        119    25  3 02/08/85
048-1052 0-21000-65418 012  10 OZ KRAFT JELLY APPLE       10     7.20         83    28  3 12/28/84       2
048-1060 0-21000-65417 012  10 OZ KRAFT JELLY GRAPE       10     7.20         83    28  3 02/08/85       1
048-1064 0-21000-65440 012  18 OZ KRAFT SEEDLESS BLKBRY   10    17.04        195    27  3           N
048-1070 0-21000-65437 012  18 OZ KRAFT JELLY GRAPE       10    10.68        109    18  3 02/28/85
048-1072 0-21000-65524 012  18 OZ KRAFT RED PLUM PRESERVS 10    13.68        163    30  3 02/28/85
048-1074 0-21000-65529 012  18 OZ KRAFT GRAPE JAM         10    10.68        109    18  3 02/08/85       2
048-1075 0-21000-65449 012   2 LB KRAFT GRAPE JELLY       10    15.64        169    23  3 03/29/85
048-1079 0-21000-65522 012  18 OZ KRAFT BLKBERRY PRESERVE 10    17.76        179    17  3           N
048-1080 0-21000-65420 012  10 OZ KR RED CURRENT          10    10.32        113    24  3           N
048-1092 0-21000-65520 012  18 OZ KRAFT PINEAPL PRESERVES 10    15.46        169    24  3 02/28/85
048-1093 0-21000-65525 012  18 OZ KRAFT ORANGE MARMALADE  10    11.28        115    18  3           N
048-1095 0-21000-65422 012  10 OZ KRAFT MINT JELLY        10     7.20         79    24  3 02/08/85
048-1102 0-21000-65521 012  18 OZ KRAFT APRICOT PRESERVES 10    14.76        169    27  3 02/28/85
048-1105 0-21000-65516 012  18 OZ KRAFT GRAPE PRESERVES   10    10.92        113    19  3 02/28/85
048-1114 0-21000-65519 012  18 OZ KRAFT PEACH PRESERVES   10    13.80        139    17  3 02/28/85       2
048-1130 0-21000-65517 012  18 OZ KRAFT STRAWBERRY PRESV  10    16.80        179    22  3 03/29/85
048-1202 0-75500-00061 012  16 OZ GARNER GRAPE JAM        10     9.47         99    20  3           N
048-1209 0-75500-00026 006   3 LB GARNER'S APPLE JELLY    10    11.42        249    24  3           N
048-1210 0-75500-00029 012  16 OZ GARNER APPLE JELLY      10     9.47         95    17  3 03/22/85       2
                                                        TEMPORARY SRP         75  EXPIRATION DATE 05/02/85
048-1211 0-75500-00026 012  10 OZ GARNER APPLE JELLY      10     7.22         75    20  3 02/28/85       2
048-1212 0-75500-00042 012  16 OZ GARNER APPLE-BLACKBERRY 10     9.47         99    20  3
048-1213 0-75500-00039 012  16 OZ GARNER APPLE GRAPE JELY 10     9.47         99    20  3 02/08/85
048-1214 0-75500-00030 012  10 OZ GARNER GRAPE JELLY      10     7.22         75    20  3 02/28/85       2
048-1215 0-75500-00079 012  10 OZ GARNER GRAPE JAM        10     7.40         79    22  3           N
048-1216 0-75500-00034 012  16 OZ GARNER GRAPE JELLY      10     9.47         95    17  3 03/22/85       6
                                                        TEMPORARY SRP        .75  EXPIRATION DATE 05/02/85
048-1217 0-75500-00032 012  32 OZ GARNERS GRAPE JELLY     10    15.80        179    26  3
048-1219 0-75500-00033 006  48 OZ GARNERS GRAPE JELLY     10    11.42        253    25  3
048-1220 0-75500-00051 012  10 OZ GARNER STRAWBERRY PRESV 10     8.90         99    25  3 02/28/85
048-1222 0-75500-00055 012  16 OZ GARNER STRAWBERRY PRESV 10    13.46        145    23  3
048-1225 0-75500-00054 006   3 LB GARNER STRAW PRESERVES  10    17.28        369    22  3           N
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FORM WBL2DP

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ARLESTON        CUSTOM PRICE BOOK FOR STORE 6147 REIDS RED & WHITE         (WB2)     DATE 04/12/85            PAGE      61  1569

 ITEM                                                    C                             DATE     A L  AVG    DSD   S  TEMP-PRICE
 CODE         UPC       PACK   SIZE       DESCRIPTION      GL G   COST       SRP   CS GIG ZN LAST CHG I F  MVMT  VENDOR T  DLT DT

                                          COMMODITY CLASS - 045  SAUCES & MUSHRMS
045-0287 0-47600-80502 012  12 OZ FRANKS RED HOT SAUCE      10    10.18       109    22  4             N
045-0286 0-75500-00012 004   1 GAL TEXAS PETE HOT SAUCE     10    14.90       465    20  4             N
045-0289 0-48400-00010 012  12 OZ CRYSTAL HOT SAUCE         10     8.23        83    17  4 02/08/85          1
045-0293 0-75500-00001 024   6 OZ TEXAS PETE HOT SAUCE      10     8.25        43    20  4 02/08/85          9
045-0294 0-75500-00000 024   3 OZ TEXAS PETE HOT SAUCE      10     6.25        29    10  4 02/08/85          9
045-0295 0-48400-00031 012  6 OZ  CRYSTAL GREEN PEPPERS     10     8.64        93    23  4 02/08/85          1
045-0296 0-48400-00001 024   3 OZ CRYSTAL HOT SAUCE         10     6.53        29     6  4             N
045-0297 0-48400-00002 024   6 OZ CRYSTAL HOT SAUCE         10     8.39        43    19  4 03/22/85         40
                                                    TEMPORARY SRP         .35   EXPIRATION DATE 05/09/85
045-0298 0-75500-00002 012  12 OZ TEXAS PETE HOT SAUCE      10     7.95        79    16  4 02/08/85          5
045-0300 0-41500-01302 024   5 OZ FRENCH WORCESTERSHIRE     10    12.10        63    20  4 02/08/85          3
045-0308 0-41500-01318 012  15 OZ FR WORCHESTERSHIRE SCE    10    12.70       135    22  4 02/08/85          2
045-0310 0-41500-01310 012  10 OZ FRENCH WORCESTERSHIRE     10    10.40        99  * 12  4 03/22/85         12
045-0311 0-04840-00028 012   8 OZ CRYSTAL TACO SAUCE        10     6.29        65    19  4             N
045-0312 0-48400-00012 012   8 OZ CRYSTAL PICANTE SAUCE     10     7.25        79    24  4             N
045-0313 0-48400-00077 012  10 OZ CRYSTAL WORCESTERSHIRE    10     8.41        85    16  4             N
045-0321 0-13000-00264 012  10 OZ HEINZ 57 STEAK SAUCE      10    21.16       209    16  4 02/22/85          4
045-0327 0-13000-00269 024   5 OZ HEINZ 57 STEAK SAUCE      10    23.74       115    14  4 02/22/85          6
045-0330 0-47600-05004 012  10 OZ DURKEE FAMOUS SAUCE       10    12.84       133    20  4 02/08/85
045-0338 0-48400-00022 012  10 OZ CRYSTAL STEAK SAUCE       10    15.49       165    22  4             N
045-0339 0-48400-00065 012  28 OZ CRYSTAL BBQ SAUCE ONION   10    14.35       149    20  4             N
045-0351 0-41500-01325 012  5 OZ  FRENCH CATTLEMEN STK SC   10     9.96        99    16  4 02/08/85          1
045-0525 0-22400-00001 012  10 OZ MRS DASH STEAK SAUCE      10    20.09       199    18  4 02/08/85     N
045-0620 0-41500-00010 048   6 OZ FRENCH SALAD MUSTARD      10    16.24        39    13  4 02/08/85          7
045-0630 0-41500-00020 048   9 OZ FRENCH SALAD MUSTARD      10    20.32        49    14  4 02/08/85          6
045-0635 0-41500-00041 012   6 OZ FRENCH MUSTARD H RADISH   10     4.86        48    17  4 02/08/85
045-0642 0-41500-00050 012  12 OZ FRENCH PUMP PAK MUSTARD   10     8.04        79    15  4             N
045-0650 0-41500-00030 012  24 OZ FRENCH SALAD MUSTARD      10     8.80        85    14  4 02/08/85          7
045-0652 0-41500-00305 012  26 OZ FRENCH MUSTARD BONUS      10     8.80        85    14  4                N
045-0662 0-41500-00054 012   6 OZ FRENCH MUSTARD W/ONION    10     5.14        49    13  4 02/08/85          2
045-0665 0-41500-00700 024   8 OZ FRENCH SQUEEZE MUSTARD    10    11.20        55    15  4 02/08/85          6
045-0667 0-41500-00710 012  16 OZ FRENCH SQUEEZE MUSTARD    10     8.80        89    18  4 02/08/85          5
045-0671 0-41500-00042 012  12 OZ FRENCH BOLD & SPICY SQZ   10     8.80        89    16  4 04/12/85
                                                    TEMPORARY SRP         .83   EXPIRATION DATE 05/09/85
045-0674 0-41500-01040 024   9 OZ FR BOLDNSPICY MUSTARD     10    10.40        49    12  4             N
045-0675 0-41500-00015 012   8 OZ FR VIVE LA DIJON MUSTRD   10    11.40       115    17  4             N
045-0694 0-54400-00024 012   8 OZ GREY POUPON MUSTARD       10    12.71       125    15  4 02/08/85          3
045-0695 0-54400-00040 012   8 OZ GRY-PUPN CTY DIJON MUST   10    12.71       129    18  4 02/14/85
045-0701 0-64144-32130 024   8 OZ GULDENS BROWN MUSTARD     10    11.12        53    13  4 02/08/85
045-0707 0-52500-05755 012  32 OZ SAUERS PURE MUSTARD       10     5.87        59    17  4 03/08/85         12
045-0710 0-21000-65305 024   6 OZ KRAFT SALAD MUSTARD       10     8.04        45    26  4 02/08/85          5
045-0735 0-21000-65314 024   8 OZ KR SQUEEZE MUSTARD        10    11.16        53    12  4 02/08/85          3
045-0750 0-70080-00001 024  10.5Z PLOCHMAN SQUEEZ MUSTARD   10    10.90        53    14  4 02/22/85          6
                                                    TEMPORARY SRP         .43   EXPIRATION DATE 04/25/85
045-0760 0-48400-00083 012   2 LB CRYSTAL PURE MUSTARD      10     6.00        59    15  4             N
045-0811 0-13000-53830 012  18 OZ HEINZ BBQ SAUCE W-ONION   10    13.84       119     3  4
                                                    TEMPORARY SRP         .99   EXPIRATION DATE 05/02/85
045-0814 0-13000-53960 012  18 OZ HEINZ BBQ SCE REGULAR     10    13.84       119     3  4
                                                    TEMPORARY SRP         .99   EXPIRATION DATE 05/02/85
045-0817 0-01300-53840 012  18 OZ HEINZ BBQ SAUCE CHUNKY    10    13.84       119     3  4 04/04/85
                                                    TEMPORARY SRP         .99   EXPIRATION DATE 05/02/85
045-0821 0-13000-53860 012  18 OZ HEINZ BBQ SCE MUSHROOM    10    13.84       119     3  4
                                                    TEMPORARY SRP         .99   EXPIRATION DATE 05/02/85
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CHARLESTON         CUSTOM PRICE BOOK FOR STORE 8147 REIDS RED & WHITE            (KB2)      DATE 04/12/85             PAGE      62  1570

T  ITEM                                                    C                             DATE     A L  AVG    DSD    S  TEMP-PRICE
W  CODE          UPC       PACK   SIZE      DESCRIPTION   GL G  COST         SRP   CS GIG ZN LAST CHG I F MVMT  VENDOR T  DLT DT


                                           COMMODITY CLASS - 045  SAUCES & MUSHRMS
045-0827 0-13000-53850 012  18 OZ HEINZ BBQ SCE HICKORY   10     13.84       119     3  4
                                                      TEMPORARY SRP          .99   EXPIRATION DATE 05/02/85
045-0831 0-13000-53870 012  18 OZ HEINZ BBQ SCE HOT       10     13.84       119     3  4
                                                      TEMPORARY SRP          .99   EXPIRATION DATE 05/02/85
045-0837 0-21000-64580 012   9 OZ KR HORSERADISH SAUCE    10      8.76        99    26  4 02/08/85
045-0840 0-21000-67846 012  18 OZ KRAFT REG BBQ SAUCE     10     12.36       115    10  4 02/28/85        20
                                                      TEMPORARY SRP          .95   EXPIRATION DATE 05/02/85
045-0850 0-21000-67844 012  18 OZ KRAFT SMK BBQ SAUCE     10     12.36       115    10  4 02/28/85
                                                      TEMPORARY SRP          .95   EXPIRATION DATE 05/02/85
045-0851 0-21000-67857 012  18 OZ KR HOT HICK SMOKE BBQ S 10     12.36       115    10  4 02/28/85         3
                                                      TEMPORARY SRP          .95   EXPIRATION DATE 05/02/85
045-0852 0-21000-67843 012  18 OZ KR HICK SMK BBQ SCE W/O 10     12.36       115    10  4 02/28/85         6
                                                      TEMPORARY SRP          .95   EXPIRATION DATE 05/02/85
045-0856 0-21000-67918 012  18 OZ KR THK&SPY BBQ SCE-SMK  10     13.20       119     8  4            N
045-0860 0-21000-67848 012  16 OZ KRAFT HOT BBQ SAUCE     10     12.36       115    10  4 02/28/85         4
                                                      TEMPORARY SRP          .95   EXPIRATION DATE 05/02/85
045-0862 0-21000-67833 012  28 OZ KR HOT BBQ SAUCE        10     16.00       157     4  4 03/08/85
                                                      TEMPORARY SRP         1.31   EXPIRATION DATE 04/25/85
045-0870 0-21000-67847 012  28 OZ KRAFT REG BBQ SAUCE     10     18.00       157     4  4 03/08/85         4
                                                      TEMPORARY SRP         1.31   EXPIRATION DATE 04/25/85
045-0875 0-21000-67916 012  16 OZ KR THK&SPY BBQ SCE-REG  10     13.20       119     8  4 03/08/85
                                                      TEMPORARY SRP         1.05   EXPIRATION DATE 04/25/85
045-0880 0-21000-67845 012  28 OZ KRAFT SMK BBQ SAUCE     10     18.00       157     4  4 03/08/85         2
                                                      TEMPORARY SRP         1.31   EXPIRATION DATE 04/25/85
045-0883 0-21000-67834 012  18 OZ KR BBQ SAUCE W/ONION    10     12.36       115    10  4 02/28/85         6
                                                      TEMPORARY SRP          .95   EXPIRATION DATE 05/02/85
045-0959 0-41490-81382 012  18 OZ CHICKEN N RIBBS HOT     10      6.86        69    17  4 03/29/85         2
045-0960 0-41490-21579 012  18 OZ CKN & RIBS BBQ SCE REG  10      6.86        69    17  4 03/29/85         4
045-0961 0-41490-21580 012  18 OZ CKN & RIBS HICK BBQ SCE 10      6.86        69    17  4 03/29/85         2
045-0962 0-41490-21581 012  18 OZ CHICKEN N RIBBS ONION   10      6.36        69    17  4            N
045-0990 0-75616-54321 012  16 OZ PIGGIE PARK BBQ SAUCE   10     12.85       119    10  4 03/08/85        11
                                                      TEMPORARY SRP         1.13   EXPIRATION DATE 04/25/85
045-0991 0-75616-54322 012  16 OZ PIGGIE PARK HOT BBQ SCE 10     12.85       119    10  4 03/08/85         5
                                                      TEMPORARY SRP         1.13   EXPIRATION DATE 04/25/85
045-0992 0-75616-54323 012  16 OZ PIGGIE PARK HICKORY BBQ 10     12.85       119    10  4 03/08/85         8
                                                      TEMPORARY SRP         1.13   EXPIRATION DATE 04/25/85
045-0995 0-72530-00003 012  18 OZ CAROLINA TREET BBQ SCE  10     12.25       115    11  4            N
045-1005 0-41500-01424 012  18 OZ FR CATTLEMEN SMK BBQ SC 10     12.30       113     9  4            N
045-1010 0-48400-00060 012  18 OZ CRYSTAL BBQ SAUCE       10      9.54        89    11  4            N
045-1011 0-48400-00066 012  28 OZ CRYSTAL BBQ SAUCE       10     14.35       129     7  4            N
045-1030 0-24000-00415 012  12 OZ DELMONTE CHILI SAUCE    10      8.68        89    19  4            N
045-1040 0-13000-00112 012  12 OZ HEINZ CHILI SAUCE       10      9.53        99    20  4 02/08/85         2
045-1150 0-41500-01420 012  18 OZ FR CATTLEMEN REG BBQ SC 10     12.30       119    14  4            N
045-2520 0-71100-00053 012   2 OZ KITCHEN BOUQUET         10      6.98        69    16  4 02/08/85         2

                                           COMMODITY CLASS - 046  CATSUP
046-0210 0-50700-03455 024  14 OZ R&W CATSUP              10     10.93        55    17  4 02/08/85         2
046-0225 0-50700-03465 012  32 OZ R&W CATSUP              10     11.06        99     7  4 02/08/85         2
046-0290 0-24000-00407 024  14 OZ DELMONTE CATSUP         10     15.71        77    15  4            N
046-0308 0-24000-00602 012  24 OZ DELMONTE CATSUP         10     12.99       115     6  4            N
046-0315 0-24000-00410 012  32 OZ DELMONTE CATSUP         10     16.51       149     8  4 03/29/85
                                                      TEMPORARY SRP         1.09   EXPIRATION DATE 05/23/85
046-0325 0-24000-00713 012  44 OZ DELMONTE CATSUP         10     22.04       213    14  4            N
```

FORM WRL20P

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	10.92	1.29							21210 W SWAN CHERRIES W/STEM	12	10Z
2	7.60	.83							31206 W SWAN GREEN CHERRIES	12	6Z
3	10.17	1.15							11210 W SWAN MARA CHERRIES	12	10Z
4	14.68	.83							12406 W SWAN MARA CHERRIES	24	6Z
5	**************************************										
6	*** CRANBERRY SAUCE 15070 ***										
7	**************************************										
8	15.04	.79							01000 O S STR CRANBERRY SAUCE	24	300
9	8.30	2/ .89							01006 O S STR CRANBERRY SAUCE	24	8Z
10	15.04	.79							01035 O S WHO CRANBERRY SAUCE	24	300
11	9.12	2/ .99							01200 PARADE STR CRANBERRY SC	24	300
12	9.12	2/ .99							01201 R&W STR CRANBERRY SAUCE	24	300
13	**************************************										
14	*** PIE FILLINGS 15080 ***										
15	**************************************										
16	10.83	1.19							08003 THANK YOU APPLE PIE FIL	12	2
17	16.83	1.89							08012 THANK YOU BLACKBERRY PF	12	2
18	13.33	1.49							08015 THANK YOU BLUEBERRY PF	12	2
19	14.82	1.59							08021 THANK YOU CHERRY PIE F	12	2
20	7.98	.89							08105 THANK YOU CHOC PUDDING	12	303
21	9.63	1.09							08201 THANK YOU EGG CUSTARD	12	303
22	12.08	1.39							08030 THANK YOU LEMON PIE FIL	12	2
23	14.33	1.59							08036 THANK YOU PEACH PIE FIL	12	2
24	7.98	.89							08130 THANK YOU RICE PUDDING	12	303
25	17.83	1.99							08060 THANK YOU STRAWBERRY PF	12	2
26	7.98	.89							08140 THANK YOU TAPIOCA PUDDN	12	303
27	**************************************										
28	*** FRUITS MISC 15090 ***										
29	**************************************										
30	14.14	.79							15635 D DUCK GRAPEFRUIT SECT	24	16Z
31	17.10	.99							01148 DELMONTE MANDARIN ORANG	24	11Z
32	13.87	.79							AE834 DURKEE MANDARIN ORANGES	24	11Z
33	10.53	.59							30998 SUNSHINE FC MANDARIN OR	24	11Z
34	11.47	1.29							01805 THANK U R/TART/P CHERRY	12	303
35	14.71	1.63							01405 THANK YOU BLACKBERRIES	12	303
36	13.71	1.49							01515 THANK YOU BLUEBERRIES	12	300
37	12.02	1.29							01715 THANK YOU DSP CHERRIES	12	16Z
38	9.35	1.09							36301 WHITE H ESCALLOPED APPL	12	15Z
39	9.87	1.09							36300 WHITE H SLICED APPLES	12	2
40	10.37	1.15							36403 WHITE H SPICE APPL RING	12	15Z
41	**************************************										
42	*** JUICE - GLASS - CAN 16000 ***										
43	*** APPLE JUICE GLASS 16010 ***										
44	**************************************										
45	5.67	1.19							00000 CAROLINA GOLD APPLE JU.	6	64Z
46	6.52	.69							00000 CAROLINA GOLD APPLE JU.	12	32Z
47	6.20	1.29							66239 KRAFT APPLE JUICE	6	44Z
48	11.06	1.25							31334 MOTTS APPLE JUICE	12	32Z
49	13.52	1.45							31417 MOTTS APPLE JUICE	12	40Z
50	10.76	2.29							31649 MOTTS APPLE JUICE	6	64Z
51	9.21	.93							12050 PARADE APPLE JUICE	12	32Z
52	9.21	.99		k /					12050 R&W APPLE JUICE	12	32Z
53	8.49	2/ .89							00024 TROPICANA APPLE JCE SC	24	7Z
54	10.45	1.15							36913 WHITE H APPLE CHERRY JC	12	32Z
55	9.46	2.09							36421 WHITE H APPLE CIDER	6	64Z
56	9.75	.99							36410 WHITE H APPLE JUICE	12	32Z

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	7.25	1.53							36403 WHITE H APPLE JUICE	6	48Z
2	9.46	1.99							36412 WHITE H APPLE JUICE	6	64Z
3	7.15	2.39							36131 WHITE H APPLE JUICE GLS	4	6 PK
4	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
5	◆◆◆ GRAPE JUICE GLASS 16012 ◆◆◆										
6	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
7	8.85	.93							31579 PARADE GRAPE JUICE	12	24Z
8	8.80	.93							03579 R&W GRAPE JUICE	12	24Z
9	11.42	2.39							37100 WELCH CHILL GRAPE JUICE	6	64Z
10	12.28	1.35							37000 WELCH CHILLED GRAPE JU	12	32Z
11	11.52	3/ .99							20000 WELCH GRAPE JUICE GLS	48	4Z
12	11.12	1.19							20300 WELCH GRAPE JUICE GLS	12	24Z
13	13.05	.69							20100 WELCH GRAPE JUICE GLS	24	12Z
14	17.37	1.89							20400 WELCH GRAPE JUICE GLS	12	40Z
15	11.12	1.15							22300 WELCH WHITE GRAPE JCE	12	24Z
16	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
17	◆◆◆ ORANGE JUICE - GLASS 16014 ◆◆◆										
18	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
19	9.82	2.09							06268 KRAFT ORANG PINEAPL JC	6	64Z
20	10.23	1.99							66295 KRAFT ORANGE JUICE	6	64Z
21	10.41	1.15							66290 KRAFT ORANGE JUICE	12	32Z
22	7.20	1.49							06237 KRAFT ORANGE JUICE	6	44Z
23	9.76	1.09							66292 KRAFT ORANGE PINEAPL JC	12	32Z
24	8.07	2/ .85							00022 TROPICN ORANGE JUICE	24	7Z
25	10.78	1.15							00000 TROPICN ORANGE JUICE	12	32Z
26	10.60	2.19							00001 TROPICN ORANGE JUICE GL	6	64Z
27	8.07	2/ .85							00025 TROPICN ORNG/PAPPL JUIC	24	7Z
28	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
29	◆◆◆ GRAPEFRUIT JUICE GLASS 16016 ◆◆◆										
30	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
31	6.32	1.29							06238 KRAFT GRAPEFRUIT JUICE	6	44Z
32	10.24	1.09							66294 KRAFT ORANGE GRPFT JUIC	12	32Z
33	9.25	1.05							66289 KRAFT UNSWT GRAPEFRT JC	12	32Z
34	9.06	1.93							66297 KRAFT UNSWT GRAPEFRT JC	6	64Z
35	9.04	1.93							00112 TROPICN GRAPEFRT JUICE	6	64Z
36	9.22	.99							00002 TROPICN GRAPEFRT JUICE	12	32Z
37	8.07	2/ .85							00023 TROPICN GRAPEFRT JUICE	24	7Z
38	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
39	◆◆◆ PRUNE JUICE GLASS 16018 ◆◆◆										
40	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
41	9.84	1.05							30989 PARADE PRUNE JUICE	12	32Z
42	9.84	1.05							02989 R&W PRUNE JUICE	12	32Z
43	12.83	2.15							11054 SUNSWEET PRUNE JC CAN	8	6PK 5.
44	16.47	1.75							11401 SUNSWEET PRUNE JUICE	12	40Z
45	14.50	2.05							11489 SUNSWEET PRUNE JUICE	9	48Z
46	13.46	1.35							11328 SUNSWEET PRUNE JUICE	12	32Z
47	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
48	◆◆◆ MISC JUICE GLASS 16020 ◆◆◆										
49	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
50	9.12	1.05							15198 BDN 100% PURE LEMON JCE	12	8Z
51	8.83	.95							03773 GATORADE FRUIT PUNCH SC	12	32Z
52	6.21	1.35							03398 GATORADE FRUIT PUNCH SC	6	46Z
53	6.21	1.35							03977 GATORADE LEMON LIME SC	6	46Z
54	8.83	.95							03917 GATORADE LEMON LIME SC	12	32Z
55	8.75	2.79							03787 GATORADE LEMON LIME SC	4	6PK 12.
56	6.21	1.35							03980 GATORADE ORANGE SC	6	46Z

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	15.27	.79							30402 PARADE PEARS HALVES	24	303
2	⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥										
3	⬥⬥⬥	PEACHES							15040 ⬥⬥⬥		
4	⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥										
6	18.98	.99		#3					06473 ARGO SLIC YC PEACHES	24	29Z
6	22.23	1.19							01041 DELMONTE HLV PEACHES	24	29Z
7	16.01	.89							01933 DELMONTE LITE PEACH HLV	24	16Z
8	16.01	.89							01936 DELMONTE LITE PEACH SLI	24	16Z
9	16.86	.93							01044 DELMONTE PEACH HLVS	24	303
10	16.86	.93							01065 DELMONTE PEACH SLICES	24	303
11	22.23	1.19							01062 DELMONTE SLI PEACHES	24	29Z
12	11.49	.63							01114 DELMONTE SLI PEACHES	24	8.75Z
13	18.21	1.95							01054 DELMONTE WH SPICE PEACH	12	2 1/2GL
14	16.27	.89							00000 GREER PEACHES	24	2 1/2
15	5.41	.59							14299 LIBBY LITE PEACH SLI.	12	8Z
16	15.74	.85							13809 LIBBY LITE PEACHES HLVS	24	303
17	15.74	.85							14109 LIBBY LITE PEACHES SLI.	24	303
18	16.69	.89							13779 LIBBY PEACH HALVES	24	303
19	16.19	.85							14079 LIBBY PEACH SLI.	24	303
20	11.12	.59							01430 LIBBY PEACH SLICED	24	8Z
21	15.02	.79							30326 PARADE PEACHES HALVES	24	303
22	15.02	.79							30356 PARADE PEACHES SLICED	24	303
23	13.50	.73							02317 R&W PEACHES HALVES	24	303
24	13.50	.73							02359 R&W PEACHES SLICED	24	303
25	13.99	1.53							30987 SUNSHINE PICKLED PEACH	12	22Z
26	⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥										
27	⬥⬥⬥	PINEAPPLE							15050 ⬥⬥⬥		
28	⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥										
6 29	14.38	.75		# 7					00197 DELMONTE CHK PINEAPPLE	24	1 1/2
30	18.26	.99							00165 DELMONTE CRU PINEAPPLE	24	2
31	14.38	.75							00198 DELMONTE CRU PINEAPPLE	24	1 1/2
32	10.18	.55							00170 DELMONTE CRU PINEAPPLE	24	1
33	14.38	.75							01767 DELMONTE PINEAPLE SPEAR	24	15.5Z
34	18.26	.99							01185 DELMONTE SLI PINEAPPLE	24	2
35	10.18	.55							00166 DELMONTE SLI PINEAPPLE	24	1
36	14.38	.75							00196 DELMONTE SLIC PINEAPPLE	24	1 1/2
37	18.29	.99							00473 DOLE CHUNK PNAPL IN JUC	24	2
38	10.22	.55							00619 DOLE CRUSH PNAPL IN JUC	24	8Z
39	10.22	.55							00609 DOLE CRUSHED PINEAPPLE	24	1
40	18.34	.99							00602 DOLE CRUSHED PINEAPPLE	24	2
41	18.29	.99							00143 DOLE SLI PNAPPLE IN JUC	24	2
42	10.22	.55							00109 DOLE SLICED PINEAPPLE	24	1
43	18.34	.99							00102 DOLE SLICED PINEAPPLE	24	2
44	15.02	.69							00337 EMPRESS CHNK PINEAPPLE	24	20Z
45	15.02	.69							00336 EMPRESS CRSH PINEAPPLE	24	20Z
46	15.02	.69							00335 EMPRESS SLI PINEAPPLE	24	20Z
47	15.74	.85							28725 PARADE CRUSH PINEAPPLE	24	2
48	15.74	.85							30762 PARADE SLICED PINEAPPLE	24	2
49	15.33	.85							02718 R&W CRUSHED PINEAPPLE	24	2
50	⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥										
51	⬥⬥⬥	CHERRIES							15060 ⬥⬥⬥		
52	⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥⬥										
53	22.27	1.29							AA617 DURKEE FANCY RED CHERRY	24	10Z
54	7.97	.93							AA667 DURKEE GREEN CHERRY	12	6Z
55	23.47	1.35							AA587 DURKEE RED STEM CHERRY	24	10Z
56	18.37	1.05							AA685 DURKEE SALAD CHERRY	24	10Z

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

REF NO	COST	SRP	%	STORE RECORD 5	4	3	2	1	DESCRIPTION	PACK	SIZE
1	******	*******	**	**	**	**	*	**	********************		
2	***	FISH CAN MISC							14070 ***		
3	******	*******	**	**	**	**	*	**	********************		
4	21.52	1.25							28293 BLUE PLATE COVE OYSTERS	24	7Z
5	27.21	2.99							00057 CR PRNCE FNCY WH CRABMT	12	6Z
6	19.95	2.25							00056 CROWN PRINCE CRABMEAT	12	6Z
7	16.45	.89							00002 CROWN PRINCE KIPPERSNAK	25	3.25
8	15.17	1.65							00081 CROWN PRINCE TNY SHRIMP	12	4.25Z
9	10.01	1.09							00086 CRWN PRINCE MINCD CLAMS	12	6.5Z
10	12.84	.75							00031 CRWN PRNCE ANCHOVIE FLT	25	2Z
11	21.56	1.23							00052 CRWN PRNCE BOILD OYSTER	24	8Z
12	18.69	1.05							00051 CRWN PRNCE SMKED OYSTER	25	3.75Z
13	21.79	1.19							00053 CRWN PRNCE SMOKED CLAMS	25	3.5Z
14	16.42	.79							AJ828 DURKEE KIPPERSNACKS	25	3.75Z
15	23.07	1.09							AE820 DURKEE SMOKED CLAMS	25	3.75Z
16	20.02	.99							AE818 DURKEE SMOKED OYSTER	25	3.75Z
17	14.56	.79							00491 EATWELL MACKERAL	24	1
18	14.77	.59							73600 EMPRESS MACKERAL	24	15Z
19	18.02	.99							AE816 GRANADASIA BOILD OYSTER	24	8 Z
20	******	*******	**	**	**	**	*	**	********************		
21	***	FRUITS CAN							15000 ***		
22	***	APPLESAUCE							15010 ***		
23	******	*******	**	**	**	**	*	**	********************		
24	7.20	3/1.00							00112 GREER APPLESAUCE	24	300
25	10.50	1.19							21251 MOTTS APPLE SAUCE	12	25Z
26	10.50	1.13							23240 MOTTS NAT APPLE SAUCE	12	24Z
27	9.13	2/ .99							11020 PARADE APPLESAUCE	24	303
28	10.20	.53							02035 STOKELY APPLESAUCE	24	303
29	9.03	.93							00077 W H NAT PLUS APPLESAUCE	12	25Z
30	9.03	.95							36043 WHITE H APPLESAUCE	12	25Z
31	11.05	.59							36201 WHITE H APPLESAUCE	24	303
32	8.76	1.89							36053 WHITE H APPLESAUCE	6	50Z
33	8.56	.45							36013 WHITE H APPLESAUCE	24	8.5Z
34	10.13	1.09							36083 WHITE H CHUNKY APPLESC	12	25Z
35	******	*******	**	**	**	**	*	**	********************		
36	***	FRUIT COCKTAIL							15020 ***		
37	******	*******	**	**	**	**	*	**	********************		
38	11.84	.65							01147 DELMONTE FRUIT COCKTAIL	24	8.75Z
39	18.11	.95							01095 DELMONTE FRUIT COCKTAIL	24	303
40	17.21	.93							01924 DELMONTE LITE FRT COCKT	24	16Z
41	17.66	.95							01922 DELMONTE LITE MIX FRUIT	24	16Z
42	17.34	.95							15009 LIBBY CHUNK MIX FRUIT	24	303
43	17.29	.93							14909 LIBBY LITE CK MIX FRUIT	24	303
44	5.60	.59							14709 LIBBY LITE FRT COCKTAIL	12	8Z
45	16.99	.89							14559 LIBBY LITE FRT. COCKTAL	24	303
46	15.85	.85							29526 PARADE FRUIT COCKTAIL	24	303
47	14.03	.75							01526 R&W FRUIT COCKTAIL .	24	303
48	******	*******	**	**	**	**	*	**	********************		
49	***	PEARS							15030 ***		
50	******	*******	**	**	**	**	*	**	********************		
51	11.74	.65							01020 DELMONTE HLVS PEARS	24	8.5Z
52	17.21	.93							02214 DELMONTE LITE HLV PEARS	24	16Z
53	17.21	.93							01025 DELMONTE PEARS HALVES	24	303
54	16.29	.89							16139 LIBBY LITE PEAR HLVS	24	303
55	17.04	.95							01609 LIBBY PEAR HALVES	24	303
56	23.95	1.25							16069 LIBBY PEARS	24	2 1/2

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	11.64	3/ .85							00726 FLEISH RAPID-RISE YEAST	56	PK
2	10.06	3/ .75							00711 FLEISHMANN YEAST	54	PK
3	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
4	≑≑≑	STUFFING MIX							41050 ≑≑≑		
5	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
6	7.41	.79							40880 B C CHICKEN STUFFING MX	12	6Z
7	7.41	.79							40910 B C CORNBREAD STUFFING	12	6Z
8	7.41	.79							40900 B C TRAD HERB STUFFING	12	6Z
9	10.05	1.15							07502 KELL CROUTETTE STUFFING	12	7Z
10	19.34	.99							43069 RICE A RONI CHCK STUFFG	24	5Z
11	9.68	.99							43072 RICE A RONI HRB/BTR STF	12	6Z
12	9.92	1.09							28533 STOVE TOP STF CORNBREAD	12	6Z
13	23.09	1.09							28521 STOVE TOP STUF CHICKEN	28	6Z
14	9.92	1.09							28593 STOVE TOP STUFFING PORK	12	6Z
15	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
16	≑≑≑	SALT							42000 ≑≑≑		
17	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
18	12.34	1.39							02020 ADOLPH PL SALT SUBSTUTE	12	2.5Z
19	2.82	3.65							01492 BAG SALT EVAP GRAN	1	25LB
20	8.82	1.09							01085 COOK/CANNING TABLE SALT	12	5LB
21	11.27	1.29							05400 LAWRY SEASND SALT FREE	12	2.5Z
22	8.59	.85							04212 MORTON ICE CREAM SALT	15	4 LB
23	7.49	.39							01003 MORTON IODIZED SALT	24	26Z
24	10.86	.59							01041 MORTON LITE SALT	24	11Z
25	7.49	.39							01001 MORTON PLAIN SALT	24	26Z
26	5.40	.63							00000 MORTON POP CORN SALT	12	3.75Z
27	5.84	.65							00433 MORTON SALT SHAKERS	12	8Z
28	11.30	1.29							00503 MORTON SALT SUB PLAIN	12	3.1Z
29	6.93	.79							00443 MORTON SALT/PEP SHAKERS	12	5.5Z
30	15.50	1.79							00009 MRS DASH LOW PEPPER	12	2.5Z
31	15.50	1.79							00008 MRS DASH SALT SUB.	12	2.5Z
32	25.22	2.73							08360 NO SALT	12	11Z
33	5.73	3/ .89							01063 PARADE IODIZED SALT	24	26Z
34	5.73	3/ .89							01061 PARADE PLAIN SALT	24	26Z
35	5.73	3/ .89							01063 R&W IODIZED SALT	24	26Z
36	5.84	3/ .89							01061 R&W PLAIN SALT	24	26Z
37	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
38	≑≑≑	SUGAR							43000 ≑≑≑		
39	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
40	13.21	1.39							33900 D C BROWN SUGAR SYRUP	12	16Z
41	13.08	.69							33124 D C DARK BROWN SUGAR	24	1 LB
42	13.08	.69							33122 D C LT BROWN SUGAR	24	1 LB
43	12.95	1.35							33126 D C LT BROWN SUGAR	12	2 LB
44	8.95	10.09							33230 D C SUGAR	1	25 LB
45	22.56	.95							33500 D C SUGAR	30	2 LB
46	19.16	3.63							33400 D C SUGAR	6	10 LB
47	19.22	1.69		#	4				33300 D C SUGAR	12	5 LB
48	14.12	1.49							33040 D C SUGAR BOWL ENVELOPE	12	112CT
49	15.64	.89							33114 D C TABLET SUGAR	24	1 LB
50	12.95	1.35							33128 D C 10X POWDER SUGAR	12	2 LB
51	13.07	.69							33120 D C 10X SUGAR	24	1 LB
52	13.07	.69							33118 D C 4X SUGAR	24	1 LB
53	17.97	1.59							32453 PARADE SUGAR	12	5 LB
54	17.97	1.59							32360 R&W SUGAR	12	5 LB
55	≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑≑										
56	≑≑≑	SPICES							44000 ≑≑≑		

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

REF NO	COST	SRP	STORE RECORD					DESCRIPTION	PACK	SIZE
			5	4	3	2	1			
1	♦♦♦							GROUND SPICES		
2	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦							44002 ♦♦♦		
3	12.81	1.59						02006 DURKEE APPLE PIE SPICE	12	1.5Z
4	12.15	1.69						02256 DURKEE BARBECUE SEASON	12	3.25Z
5	17.62	2.25						52016 DURKEE CHILI POWDER	12	4Z
6	6.64	.87						52013 DURKEE CHILI POWDER	12	1.25Z
7	6.52	.87						52017 DURKEE CINNAMON	12	1Z
8	17.02	2.19						02024 DURKEE CINNAMON	12	3.5Z
9	9.77	1.25						52026 DURKEE CREAM TARTAR	12	1.75Z
10	11.24	1.49						52275 DURKEE CRUSHED RED PEP	12	1.5Z
11	14.89	1.95						02030 DURKEE CURRY POWDER	12	2Z
12	15.37	1.99						52195 DURKEE GARLIC POWDER	12	2Z
13	14.14	1.79						02000 DURKEE GRND ALLSPICE	12	1.75Z
14	20.91	2.69						52023 DURKEE GRND CLOVES	12	1.9Z
15	15.89	2.17						52028 DURKEE GRND CUMIN	12	1.75Z
16	16.04	2.05						02032 DURKEE GRND GINGER	12	1.75Z
17	10.44	1.35						02034 DURKEE GRND MACE	12	1Z
18	9.56	1.23						02043 DURKEE GRND NUTMEG	12	1.25Z
19	14.60	1.89						52053 DURKEE GRND RED PEPPER	12	1 7/8Z
20	12.60	1.65						52064 DURKEE GRND THYME	12	1.1Z
21	10.71	1.41						02021 DURKEE HOT CHILI POWDER	12	2Z
22	11.42	1.53						52036 DURKEE MARJORAM GRND	12	1.5Z
23	9.70	1.19						52298 DURKEE MSG	12	2 7/8Z
24	8.28	1.09						52040 DURKEE MUSTARD	12	1.5Z
25	12.25	1.63						52198 DURKEE ONION POWDER	12	1.5Z
26	8.47	1.05						52274 DURKEE OREGANO	12	.5Z
27	22.63	2.99						52051 DURKEE PAPRIKA	12	4Z
28	9.63	1.23						52049 DURKEE PAPRIKA	12	1.25Z
29	14.81	1.89						02060 DURKEE POULTRY SEAS	12	1.5Z
30	14.03	1.79						02059 DURKEE PUMPKIN PIE SPIC	12	1.5Z
31	8.77	1.23						02061 DURKEE RUBBED SAGE	12	.5Z
32	9.77	1.33						87821 PARADE GARLIC POWDER	12	2Z
33	4.72	.65						87790 R&W CHILI POWDER	12	1.5Z
34	4.58	.59						87791 R&W CINNAMON	12	1Z
35	9.77	1.29						87783 R&W GARLIC POWDER	12	2 Z
36	6.91	.83						87792 R&W NUTMEG	12	1.2Z
37	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦							♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦		
38	♦♦♦							WHOLE SPICES		
39	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦							44005 ♦♦♦		
40	7.21	.95						02130 DURKEE BAY LEAVES	12	.25Z
41	7.72	1.05						02170 DURKEE CELERY FLAKES	12	5/16Z
42	12.47	1.69						52289 DURKEE CHIVES	12	1/8Z
43	13.45	1.79						02185 DURKEE DILL WEED	12	3/4Z
44	12.82	1.63						52182 DURKEE GREEN BELL PEP	12	.75Z
45	12.90	1.59						52324 DURKEE KL PEPPERCORNS	12	4.5Z
46	14.38	1.85						52280 DURKEE MINCED GARLIC	12	2.5Z
47	9.50	1.25						52276 DURKEE MINCED ONION	12	1.5Z
48	9.65	1.19						52284 DURKEE PARSLEY FLAKES	12	.5Z
49	7.84	1.05						01010 DURKEE PEPPERCORNS	12	2Z
50	10.08	1.29						02150 DURKEE POPPY SEED	12	2.25Z
51	9.96	1.29						02269 DURKEE ROSEMARY LEAVES	12	1Z
52	10.08	1.35						02164 DURKEE SESAME SEED	12	2.5Z
53	8.71	1.09						52272 DURKEE SWEET BASIL	12	.5Z
54	15.04	1.95						02122 DURKEE WHOLE CLOVES	12	1Z
55	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦							♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦		
56	♦♦♦							PICKLING SPICES		
	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦							44010 ♦♦♦		

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	15.24	.85							33200 SUPER SUDS	24	REG
2	19.48	1.75							33300 SUPER SUDS	14	40Z
3	29.39	8.15							91240 TIDE REG SCENT FAMILY	4	171Z
4	30.87	2.39			HS				91290 TIDE REG SCENT GIANT	14	49Z
5	29.39	4.19							91230 TIDE REG SCENT KING	8	84Z
6	23.15	1.15							91210 TIDE REG SCENT MEDIUM	24	20Z
7	23.39	.53							00999 TIDE REG SCENT SMALL	60	7Z
8	29.39	8.15							91740 TIDE UNSCENTED FAMILY	4	171Z
9	30.87	2.39							91700 TIDE UNSCENTED GIANT	14	49Z
10	29.39	4.19							91230 TIDE UNSCENTED KING	8	84Z
11	23.15	1.15							91710 TIDE UNSCENTED MEDIUM	24	20Z
12	14.98	2.39							01626 TREND DETERGENT	8	72Z
13	14.98	4.79							01627 TREND DETERGENT	4	147Z
14	13.49	1.19							01625 TREND DETERGENT GT	12	42Z
15	11.24	.63							01624 TREND DETERGENT REG	24	17Z
16	◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊										
17	◊◊◊ LIQUID DISH DETERGENT 54030 ◊◊◊										
18	◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊										
19	18.06	.89							45300 AJAX LIQ DETERGENT	24	12Z
20	21.21	2.19							45540 AJAX LIQ DETERGENT	12	32Z
21	21.25	1.55							00000 AJAX LIQ DETERGENT	16	22Z
22	4.72	2/1.00							00000 BRITE PINK DISH LIQ DET	12	32Z
23	22.36	2.19							00823 DAWN LIQ DETERGENT	12	32Z
24	18.17	.89							00821 DAWN LIQ DETERGENT	24	12Z
25	21.40	1.55							00822 DAWN LIQ DETERGENT	16	22Z
26	24.71	3.23							00824 DAWN LIQ DETERGENT	9	48Z
27	11.09	1.19							47100 DERMASSAGE LIQUID	12	22Z
28	14.66	1.19							40191 DOVE LIQ DET.PP119	16	22Z
29	16.13	.79							40323 DOVE LIQ DETERGENT	24	12Z
30	11.59	2.49							40189 DOVE LIQ PP249	6	48Z
31	18.17	.89							00861 IVORY LIQ DETERGENT	24	12Z
32	21.40	1.55							00862 IVORY LIQ DETERGENT	16	22Z
33	24.71	3.23							00864 IVORY LIQ DETERGENT	9	48Z
34	22.36	2.19							00863 IVORY LIQ DETERGENT	12	32Z
35	24.71	3.23							00884 JOY LIQ DETERGENT	9	48Z
36	18.17	.89							00881 JOY LIQ DETERGENT	24	12Z
37	22.36	2.19							00883 JOY LIQ DETERGENT	12	32Z
38	21.40	1.55							00882 JOY LIQ DETERGENT	16	22Z
39	14.66	1.19							18087 LUX LIQ DET. PP119	16	22Z
40	14.55	1.49							43500 OCTAGON LIQUID DET.	12	48Z
41	24.14	3.23							40300 PALM LIQ DETERGENT	9	48Z
42	21.25	1.55							40100 PALM LIQ DETERGENT	16	22Z
43	18.06	.89							40000 PALM LIQ DETERGENT	24	12Z
44	16.66	2.19							40200 PALM LIQ DETERGENT	9	32Z
45	22.36	2.19							43006 SUNLIGHT DISH LIQUID	12	32Z
46	18.17	.93							43024 SUNLIGHT LIQ. DISH DET.	24	12Z
47	21.40	1.55							43016 SUNLIGHT LIQ. DISH DET.	16	22Z
48	6.22	.69							26942 SUPER SAVER LIQ DETERG	12	32Z
49	9.83	.99							00823 TEXIZE PINK LOTION DET	12	32Z
50	8.73	1.29							01010 TREND LEMON LIQ. PP 129	9	32Z
51	◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊										
52	◊◊◊ DISH DETERGENTS DRY 54035 ◊◊◊										
53	◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊◊										
54	28.05	2.83							00804 CASCADE	12	50Z
55	23.43	1.99							00803 CASCADE	14	35Z
56	13.08	1.35							00802 CASCADE	12	20Z

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	14.02	.39							11139 PALM GOLD SOAP PP 39¢	48	BATH
2	13.25	.49							11249 PALM GOLD SOAP PP 49¢	36	7Z
3	25.17	.69							10200 PALM GREEN SOAP	48	BATH
4	26.25	.99							04443 SAFEGUARD BEIGE SOAP	36	SUPER
5	37.82	.69							04834 SAFEGUARD BEIGE SOAP	72	BATH
6	37.82	.69							03725 SAFEGUARD GOLD SOAP	72	BATH
7	37.82	.69							04331 SAFEGUARD WHITE SOAP	72	BATH
8	18.76	.53							71224 SHIELD DEOD SOAP	48	3.5Z
9	25.89	.69							11111 SHIELD DEOD SOAP	48	5Z
10	26.67	.93							71236 SHIELD DEOD SOAP SUPER	36	7Z
11	30.25	.83							00475 TONE MOISTURIZING SOAP	48	BATH
12	23.91	.69							00471 TONE MOISTURIZING SOAP	48	REG
13	29.10	.75							13200 VEL BEAUTY SOAP	48	5Z
14	33.12	.59							13000 VEL BEAUTY SOAP	72	3.5Z
15	27.13	2/ .99							31010 ZEST AQUA SOAP	72	COMP
16	37.82	.69							31090 ZEST AQUA SOAP	72	BATH
17	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
18	◆◆◆	DRY DETERGENTS							54020 ◆◆◆		
19	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆										
20	14.21	5.69							07220 A & H LAUNDRY DETERGENT	3	227Z
21	19.07	1.59							30700 AJAX LAUNDRY DETERGENT	14	GT
22	11.29	1.69							07260 ARM & HAMMER LNDRY DETR	8	65Z
23	14.04	1.49							03020 ARM & HAMMER WSHNG SODA	12	55Z
24	30.87	2.39							90090 BOLD DETERGENT	14	GIANT
25	29.39	4.19							90070 BOLD DETERGENT KING	8	84Z
26	23.15	1.15							90050 BOLD DETERGENT REGULAR	24	20Z
27	29.39	8.19							90080 BOLD 3 DETERGENT	4	FAM
28	29.39	4.19							90230 CHEER DETERGENT	8	KING
29	29.39	8.15							90240 CHEER DETERGENT FAMILY	4	171Z
30	26.45	2.09							90220 CHEER DETERGENT GIANT	14	49Z
31	23.15	1.15							90210 CHEER DETERGENT REGULAR	24	20Z
32	20.11	1.79							00000 COLD POWER	14	49Z
33	19.15	6.79							33000 COLD POWER DET FAM	4	147Z
34	19.15	2.99							32900 COLD POWER DET KING	8	72Z
35	32.71	2.59							90420 DREFT DETERGENT GIANT	14	44Z
36	10.14	1.19							07900 DUTCH DETERGENT	8	65Z
37	11.92	4.79							07902 DUTCH DETERGENT	3	205Z
38	29.24	8.15							31690 FAB DET FAM	4	10 LB
39	28.83	2.29							31190 FAB DET GT	14	49Z
40	29.24	4.19							37300 FAB DET KING	8	84Z
41	23.04	1.15							31090 FAB DET REG	24	20Z
42	26.33	2.39							34000 FRESH START DET	12	20Z
43	21.94	4.15							34100 FRESH START DET	6	34.5Z
44	30.87	2.39							90751 GAIN DETERGENT GIANT	14	49Z
45	29.39	4.19							90730 GAIN DETERGENT KING	8	84Z
46	23.15	1.15							90710 GAIN DETERGENT REGULAR	24	20Z
47	32.71	2.59							90950 IVORY SNOW GIANT	14	32Z
48	30.87	2.39							91090 OXYDOL DETERGENT	14	GIANT
49	29.39	4.19							91030 OXYDOL DETERGENT	8	KING
50	23.15	1.13							91010 OXYDOL DETERGENT REG	24	20Z
51	19.07	1.55							38180 PUNCH DET GT	14	42Z
52	18.18	2.59							38700 PUNCH DET KING	8	72Z
53	16.35	1.69							01525 PUREX DETERGENT GT	12	42Z
54	18.05	2.49							11111 RINSO	8	72Z
55	18.05	4.89							20004 RINSO DET FAMILY	4	147Z
56	18.95	1.29							20311 RINSO DETERGENT	14	42Z

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

REF NO	COST	SRP	%	STORE RECORD 5	4	3	2	1	DESCRIPTION	PACK	SIZE
1	18.13	1.89							00410 JIF CRUNCHY PNUT BTR	12	18Z
2	24.93	1.29							00409 JIF CRUNCHY PNUT BTR	24	12Z
3	27.80	2.89							00411 JIF CRUNCHY PNUT BTR	12	28Z
4	24.93	1.29							45022 P PAN CRUNCHY PNUT BTR	24	12Z
5	27.80	2.89							00055 P PAN CRUNCHY PNUT BTR	12	28Z
6	18.13	1.93							00045 P PAN CRUNCHY PNUT BTR	12	18Z
7	24.93	1.29							00030 P PAN SMOOTH PNUT BTR	24	12Z
8	18.13	1.93							00040 P PAN SMOOTH PNUT BTR	12	18Z
9	25.79	4.19							00060 P PAN SMOOTH PNUT BTR	8	40Z
10	27.80	2.89							00050 P PAN SMOOTH PNUT BTR	12	28Z
11	15.42	.85							00010 P PAN SMOOTH PNUT BTR	24	6Z
12	14.07	1.49							00864 PARADE CRUNCHY PNUT BTR	12	18Z
13	20.62	1.09							00815 PARADE SMOOTH PNUT BTR	24	12Z
14	15.37	3.39							00836 PARADE SMOOTH PNUT BTR	6	40Z
15	14.07	1.49							00827 PARADE SMOOTH PNUT BTR	12	18Z
16	22.07	2.49							00830 PARADE SMOOTH PNUT BTR	12	28Z
17	14.07	1.49							00864 R&W CRUNCHY PNUT BTR	12	18Z
18	14.07	1.49		#6					00827 R&W SMOOTH PNUT BTR	12	18Z
19	16.89	1.39							01856 SUPERMAN CRUN PNUT BTR	12	18Z
20	11.65	1.19							01212 SUPERMAN SMTH PNUT BTR	12	12Z
21	16.89	1.39							01816 SUPERMAN SMTH PNUT BTR	12	18Z
22	$$$										
23	$$$	VEGETABLES CAN							11000 $$$		
24	$$$	PEAS							11010 $$$		
25	$$$										
26	9.37	2/ .99							10229 APRIL SHOWER JUNE PEAS	24	303
27	9.43	2/1.01							06539 ARGO SWEET JUNE PEAS	24	303
28	11.58	.63							01312 DELMONTE E G PEAS	24	303
29	11.58	.59							01331 DELMONTE NOSALT PEAS	24	17Z
30	7.83	2/ .85							01315 DELMONTE SWEET PEAS	24	8Z
31	8.47	3/1.09							11930 E TEXAS FIELD PEAS/SNAP	24	300
32	8.22	2/ .79							21310 E TEXAS FR BLACKEYE PEA	24	300
33	8.42	2/ .79							11610 E TEXAS FR CROWDER PEAS	24	300
34	8.52	3/1.09							12010 E TEXAS WHITE ACRE PEAS	24	300
35	13.16	.69							11161 GRN GT PEAS W ONIONS	24	17Z
36	7.90	.43							10258 GRN GT SWEET PEAS	24	8.5Z
37	11.50	.59							10381 GRN GT SWEET PEAS	24	303
38	15.26	.79							10165 LESUEUR EJ PEAS	24	303
39	9.42	2/ .99							10154 LESUEUR EJ PEAS	24	8.5Z
40	11.57	.63							00000 LITTLE PRINCESS PEAS	24	303
41	8.52	2/ .89							00000 LORD CHESTERFIELD PEAS	24	16Z
42	11.04	.63							06147 LUCK CROWDER PEAS/PORK	24	17Z
43	10.75	.59							30502 PARADE FCY 2SV PEAS	24	303
44	9.52	2/ .99							30325 PARADE SWEET PEAS	24	303
45	9.64	2/ .99							02525 R&W FAN 4&5 SV SWT PEAS	24	303
46	13.51	.75							02936 STOKELY PARTY PEAS	24	303
47	11.46	.59							02918 STOKELY SWEET PEAS	24	303
48	$$$										
49	$$$	CORN							11020 $$$		
50	$$$										
51	11.43	.59							01442 DELMONTE CS GOLD CORN	24	303
52	11.43	.59							01278 DELMONTE NOSALT CS CORN	24	17Z
53	11.43	.59							01380 DELMONTE NOSALT WK CORN	24	17Z
54	11.43	.59							01426 DELMONTE WK CORN	24	303
55	11.48	.59							10009 GR GNT NIBLET NO/SLT/SG	24	12Z
56	7.76	2/ .85							10536 GRN GIANT CRM STYL CORN	24	8.5Z

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

REF NO	COST	SRP	%	STORE RECORD					DESCRIPTION	PACK	SIZE
				5	4	3	2	1			
1	11.48	.59							10527 GRN GT CREAM STYLE CORN	24	303
2	12.44	.65							10453 GRN GT MEXICORN	24	12Z
3	7.76	2/ .85							10507 GRN GT NIBLET WK CORN	24	7Z
4	11.48	.59							10419 GRN GT NIBLET WK CORN	24	12Z
5	12.44	.65							10546 GRN GT SHOE PEG CORN	24	12Z
6	11.48	.59							10473 GRN GT WK CORN	24	17Z
7	7.83	2/ .79							29306 PARADE CREAM STYLE CORN	24	303
8	7.83	2/ .79							29333 PARADE WK CORN	24	303
9	10.89	.59							10617 POC W K YELLOW CORN	24	303
10	10.80	.59							00000 POCAHONTAS C S CORN	24	303
11	9.44	2/ .95							01306 R&W CREAM STYLE CORN	24	303
12	9.44	2/ .95		#7					01333 R&W WK CORN	24	303
13	7.77	.39							00000 SEVEN FARMS CREAM CORN	24	303
14	7.77	.39							00000 SEVEN FARMS W K CORN	24	303
15	11.19	.59							02837 STOKELY CREAM STY CORN	24	303
16	11.19	.59							02846 STOKELY WK CORN	24	303
17	7.27	2/ .89							01551 VAN CAMP WHITE HOMINY	24	300
18	≑≑										
19	≑≑≑	GREEN BEANS							11030 ≑≑≑		
20	≑≑										
21	11.17	.59							01269 DELM NO-SALT FR GR BEAN	24	16Z
22	11.17	.59							01264 DELM NOSALT CUT GR BEAN	24	16Z
23	11.17	.59							01391 DELMONTE CUT GR BEANS	24	16Z
24	11.17	.59							01394 DELMONTE FRN GR BEANS	24	16Z
25	12.58	.69							01378 DELMONTE WHO GRN BEANS	24	16Z
26	9.36	.49							06688 DOUBLE LUCK CT GR BEAN	24	28Z
27	6.63	2/ .69							06689 DOUBLE LUCK CT GRN BEAN	24	303
28	7.60	.39							11179 GRN GIANT FRNCH STYL BN	24	8Z
29	11.07	.59							11197 GRN GT CUT GRN BEANS	24	16Z
30	11.07	.59							11196 GRN GT FRENCH GRN BEANS	24	16Z
31	11.07	.59							11167 GRN GT KITCHEN SLI BEAN	24	16Z
32	8.07	.89							10314 GRN GT 3 BEAN SALAD	12	17Z
33	14.68	1.59							10314 HANOVER B L CUT GR BEAN	12	50Z
34	12.60	1.39							10901 HANOVER GR BEAN W/POTS	12	40Z
35	10.37	.55							07002 J&B B/L CUT GRN BEANS	24	303
36	15.37	.83							05002 J&B B/L CUT GRN BEANS	24	2 1/2
37	11.21	.59							08159 OUR FAVORITE CT GR BEAN	24	2 1/2
38	8.14	2/ .85							28351 PARADE B/LAKE CUT BEANS	24	303
39	7.83	2/ .79							28239 PARADE BL CT GRN BEANS	24	303
40	8.27	2/ .89							28270 PARADE FRENCH STY BEANS	24	303
41	9.36	.49							00000 POCA CUT GREEN BEANS	24	303
42	9.57	.49							00000 POCA FR. GREEN BEANS	24	303
43	8.69	2/ .95							00251 R&W BLUE LAKE CUT BEANS	24	303
44	8.69	2/ .95							00000 R&W CUT GREEN BEANS	24	303
45	8.39	.43							00270 R&W FRENCH GRN BEANS	24	303
46	16.03	.85							02657 STOKELY CUT GR BEANS	24	2 1/2
47	10.87	.59							02655 STOKELY CUT GR BEANS	24	303
48	6.96	.39							02651 STOKELY CUT GREEN BEAN	24	8Z
49	10.87	.59							02671 STOKELY FRENCH SLI BEAN	24	303
50	12.41	.65							02644 STOKELY WHO GRN BEANS	24	303
51	9.27	.49							08323 SUNSHINE BEANS/POTATO	24	303
52	14.97	.79							08324 SUNSHINE BEANS/POTATO	24	2 1/2
53	≑≑										
54	≑≑≑	LIMAS							11040 ≑≑≑		
55	≑≑										
56	15.33	.85							01395 DELMONTE GREEN LIMAS	24	17Z

PLEASE MARK YOUR ORDER CLEARLY WITH A RED PEN

Schafer
DISTRIBUTING
COMPANY INC.
[redacted]

CUSTOMER #	INVOICE #
CUSTOMER TEL. #	DATE
ROUTE #	LICENSE #

Internal Use	UPC	Description	Product Number	Quantity	Price	Amount
		[illegible]		2		22
		[illegible]		1		
		[illegible]		1		
		[illegible]		1		17

CREDITS	AMOUNT
EMPTY BOTTLES	
EMPTY 1/2 1/4	
EMPTY SHELL	

TOTAL CHARGES	103
TOTAL CREDITS	
NET TOTAL	103

SALESMAN ____________

A3[illegible]2452

REC'D BY ____________

		MHL QT	20	34100-00031			13.30	.
1	2	MHL 16Z	30	34100-00007	4x 3.99	1	13.40	13.40
1		MHL CANS 12Z	40	34100-00004			11.25	.
		MHL 2/12 CANS	46	34100-01602			11.65	.
	5	MHL NR F6 12Z	55	34100-01527			11.25	.
		MHL 2/12 PK NR	56	[illegible]			11.25	.
	1	MHL PONY	60	[illegible]			13.65	.
2	15	MILWA.BEST 120Z	[illegible]	[illegible]	16x1.99	4	6.80	27.20
		MEISTER BR 12Z	240	[illegible]			9.00	.
		MEISTER BRAU14Z	247	[illegible]			.00	.
1	1	LITE CANS 16Z	330	34100-00357			13.65	.
	4	LITE CANS 12Z	340	34100-00354	12x3.49	3	11.55	34.65
	1	LITE NR 6PK 12Z	350	34100-57527			11.55	.
5	19	LITE 2/12 CAN	356	34100-57602			11.35	.
	1	LBRAU NR 6PK LT	450	34100-21525			12.20	.
	1	LBRAU NR 6PK DA	455	34100-22525			12.20	.
1	1	CHAMP NR 4PK 12	555	18600-20171			15.00	.
	2	GOLD CH 4PK NR	594	[illegible]			15.00	.
1	1	PINK CH 4PK NR	654	[illegible]			15.00	.
1		MOUSSY 110Z	675	[illegible]			16.00	.
		MOLSON GOLDEN	1255	[illegible]			14.50	.
		ST. PAULI LIGHT	1350	[illegible]	4x 4.99	1	17.05	17.05
		ST. PAULI DARK	1355	[illegible]			17.05	.
1		NORDIK WOLF LT	1400	[illegible]			17.05	.
		CAL. COOLER 4PK	1450	28707-00001			20.00	.
1	2	HAFFENR 16Z NR	1650	[illegible]			[illegible]	.
		STEIDL WHT CAN	1840	72570-22292			17.50	.
		STEIDL RED CANS	1940	72570-37591			17.50	.
	1	SEAG.COOLER 4PK	2000	87000-50005			19.15	.

Bay Bridge & Beaufort

9299

Meister Bräu

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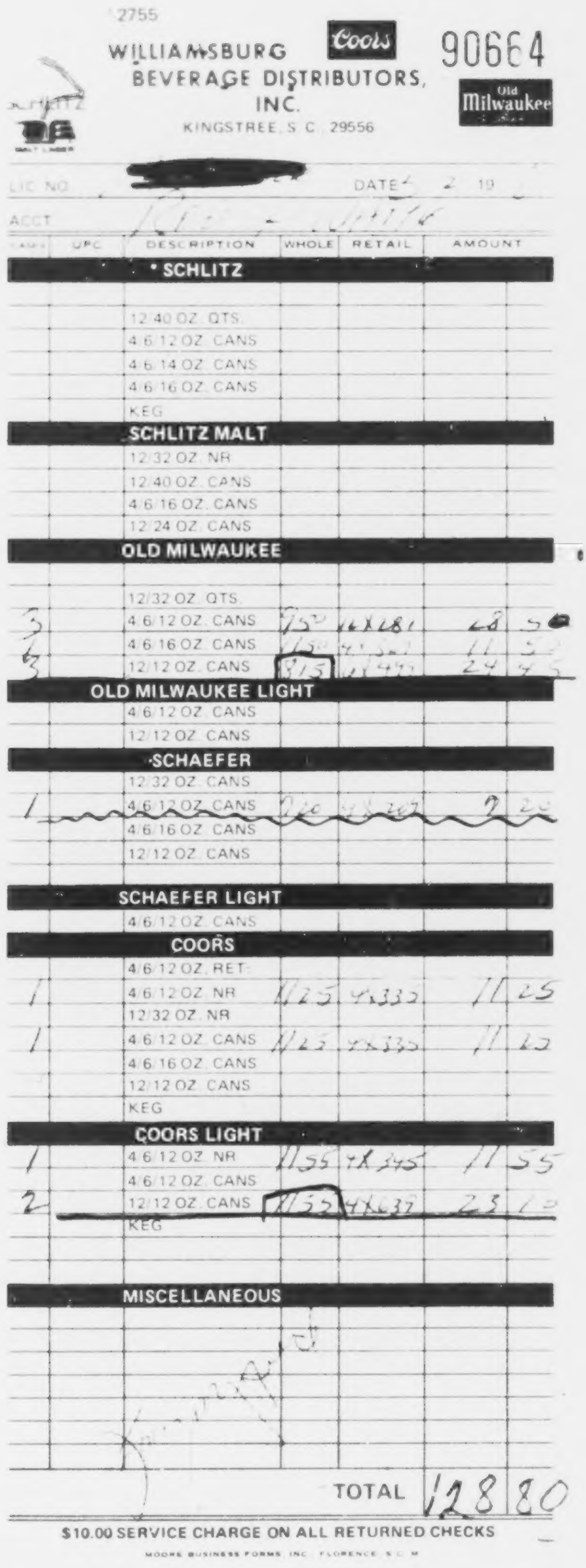
(9)

ESCRIPTION	QTY	AMT	DESCRIPTION	QTY	AMT
MHL MTS			Misc. Sales		
ite MTS					

TOTAL	92.30
MISC. SALES	
CREDIT EMPTIES	
PAY THIS	92.30



2755

WILLIAMSBURG
BEVERAGE DISTRIBUTORS,
INC.
KINGSTREE, S.C. 29556

Coors

90664

Old Milwaukee

SCHLITZ
MALT LIQUOR

LIC NO [redacted] DATE 4 2 19

ACCT [illegible]

CASES	UPC	DESCRIPTION	WHOLE	RETAIL	AMOUNT	
		SCHLITZ				
		12/40 OZ. QTS.				
		4/6/12 OZ. CANS				
		4/6/14 OZ. CANS				
		4/6/16 OZ. CANS				
		KEG				
		SCHLITZ MALT				
		12/32 OZ. NR				
		12/40 OZ. CANS				
		4/6/16 OZ. CANS				
		12/24 OZ. CANS				
		OLD MILWAUKEE				
		12/32 OZ. QTS.				
3		4/6/12 OZ. CANS	750	4x281	28	50
1		4/6/16 OZ. CANS	1150	4x[illegible]	11	50
3		12/12 OZ. CANS	815	4x[illegible]	24	45
		OLD MILWAUKEE LIGHT				
		4/6/12 OZ. CANS				
		12/12 OZ. CANS				
		SCHAEFER				
		12/32 OZ. CANS				
~~1~~		~~4/6/12 OZ. CANS~~	~~920~~	~~4x207~~	~~9~~	~~20~~
		4/6/16 OZ. CANS				
		12/12 OZ. CANS				
		SCHAEFER LIGHT				
		4/6/12 OZ. CANS				
		COORS				
		4/6/12 OZ. RET.				
1		4/6/12 OZ. NR	1125	4x335	11	25
		12/32 OZ. NR				
1		4/6/12 OZ. CANS	1125	4x335	11	25
		4/6/16 OZ. CANS				
		12/12 OZ. CANS				
		KEG				
		COORS LIGHT				
1		4/6/12 OZ. NR	1155	4x345	11	55
		4/6/12 OZ. CANS				
2		12/12 OZ. CANS	1155	4x635	23	10
		KEG				
		MISCELLANEOUS				
				TOTAL	128	80

$10.00 SERVICE CHARGE ON ALL RETURNED CHECKS

MOORE BUSINESS FORMS, INC. - FLORENCE, S.C. M

TICKET NO. 30301

[illegible] CORPORATION

DAY 4/22/85

RETURNED CHECKS WILL INCUR A $10.00 SERVICE CHARGE

RED & White

CUST NO [illegible] 22

RECEIVED APR 24 1985

OORS 24/12 OZ 6PK		17	/	11.25	
OORS LIGHT 24/12 OZ 6PK		37		11.55	
YMPIA 12/12 OZ 2PK		56		11.25	
YMPIA 24/12 OZ 6PK		57		11.25	
YMPIA LIGHT 12/12 2PK		66		11.25	
YMPIA LIGHT 24/12OZ 6PK		67		11.25	
E MAN MALT 24/16OZ CAN		73		11.75	
XX 24/12 OZ 6PK		97		6.50	
RST 12/12 OZ CANS 2/PK		106		7.95	
RST 24/12 OZ CAN 4/6	4X309	107	1	10.00	10 00
RST LGT 24/12OZ CAN 4/6		120		10.00	
RST LGT 12/12 OZ CANS		122		7.95	
HLITZ 12/12 OZ CAN 2PK		306		11.25	
HLITZ 24/12 OZ CAN 4/6		307		11.25	
HLITZ 24/14 OZ CAN 4/6		309		12.25	
HLITZ 24/16 OZ CAN 4/6		310		13.50	
HLITZ 12/40 OZ		313		13.50	
D MIL 12/12 OZ CAN 2PK	6X579	406	3	$\boxed{9.30}$	27 90
D MIL 24/12 OZ CAN 4/6		407		7.80	
D MIL 24/14 OZ CAN 4/6		409		10.70	
D MIL 24/16 OZ CAN 4/6		410		11.50	
D MIL 12/32 OZ NR BTL		414		11.50	
D MIL LIGHT 12/12 2PK		419		9.30	
D MIL LIGHT 24/12 6PK		421		7.80	
IGHT 24/12OZ CAN 4/6		507		11.25	
ALT 24/12 OZ CAN 4/6		607		11.75	
ALT 24/16 OZ CAN 4/6	[redacted]	610	2	14.00	28 00
ALT 12/32 OZ NR BTL		614		[redacted]	
ALT 12/40 OZ		617		16.00	
DY RED 14%		7900		18.00	

PAID

BY ______ DATE ______

65 90

~~65 90~~

803/648-4781
SC 29801

CUSTOMER #	INVOICE #
568	50361
CUSTOMER	DATE
	4/16/85
ROUTE #	LICENSE #
02	BW 506550

Internal Use	UPC	Description	Product Number	Quantity	Price	Amount
[illegible]	[illegible]	OLD [illegible] WAUKEE [illegible] CAN	265	2	10.60	21.20
[illegible]	[illegible]	SCHL[illegible] MALT MALT 4/6/16 CAN	375	10	13.00	130.00
[illegible]	[illegible]	SCHAEFER BEER [illegible] CAN	955	10	6.80	68.00
10.15	[illegible]	SCHAEFER LIGHT BEER [illegible] 12/12 [illegible]	1045	2	7.20	14.40
[illegible]	[illegible]	[illegible] RS 12/12 CAN	1145	3	10.25	30.75
[illegible]	[illegible]	[illegible] LT RS LT [illegible] 12CAN	1245	3	10.25	30.75

ck# 2535
4-16

4/12 96

CREDITS	AMOUNT
EMPTY BOTTLES	
EMPTY [illegible]	

TOTAL CHARGES	295.10
TOTAL CREDITS	
NET TOTAL	

Thank You!

225

34591

SOLD TO Red + White
ROUTE NO
DATE 9-19

OLIVER DISTRIBUTING CO.
8TH Ave. Ext. • P.O. Box 2867
Myrtle Beach, SC 29578
(803) 448-1644

CUST CODE 5220

UPC	DESCRIPTION		QTY	AMOUNT	RETAIL
	10110 STROH RETURNABLE	11.70			
1121	10115 STROH'S NR 4/6	11.25	1	11 25	4×345
	10120 STROH 12 OZ NR	10.20			
	10130 STROH 4/6/12 CAN	11.25			
	10135 STROH'S 2/12 CAN ***	9.4	3	28 20	6×539
	10140 STROH'S 4/6/16 CAN	13.30			
	11110 STROH LIGHT RETURN	11.70			
	11115 STROH LIGHT NR 4/6	11.25	1	11 25	4×345
	11120 STROH LIGHT 4/6 CAN	11.25			
	11135 STROH LIGHT 2/12 CAN ***	9.40			
	12130 GOEBEL 4/6 CAN	6.50			
	12135 GOEBEL 2/12 CAN	6.50			
	13130 GOEBEL LIGHT 4/6 CAN	6.50			
	13135 GOEBEL LIGHT 2/12 CAN	6.50			
	~~14130 SCHAEFER 4/6 CAN *** [illegible]~~				
	14135 SCHAEFER 2/12 CAN	7.25			
	15130 SCHAEFER LIGHT 4/6 CAN ***	[illegible]	1	6 50	4×269
	15135 SCHAEFER LIGHT 2/12 CAN	7.25	~~4~~	~~[illegible]~~	~~[illegible]~~
	20120 BLACK LABEL NR LP	[illegible]			
	20130 BLACK LABEL 4/6 CAN	7.60			
	20135 BLACK LABEL 2/12 CAN ***	7.05			
	20125 BLACK LABEL 32 NR	10.20			
	20160 BLACK LABEL [illegible]	[illegible]			
	21130 BLACK LABEL LIGHT 4/6 CAN	7.60	1	7 60	4×239
	21135 BLACK LABEL LIGHT 2/12 CN ***	7.05			
	22140 ELEVEN ELEVE 16 CAN	10.25			
	22150 ELEVEN ELEVEN 40 NR	12.25			
	23115 OLD STYLE NR 4/6	9.05			
	23130 OLD STYLE 4/6 CAN ***	8.65			
	23135 OLD STYLE 2/12 CAN ***	8.65			
	24115 OLD STYLE LIGHT NR 4/6	9.05			
	24130 OLD STYLE LIGHT 4/6 CAN ***	8.65			
	24135 OLD STYLE LIGHT 2/12 CAN ***	8.65			
	25115 BLATZ NR 4/6	7.80			
	26115 MICKEY'S 4/6 12 NR	[illegible]			
	26150 MICKEY'S 12 40 NR				
	27115 LONE STAR 4/6/12 NR	[illegible]			
	27130 LONE STAR 4/6/12 CAN	9.05			
	29130 RED WHITE & BLUE 4/6 CAN	[illegible]			
	29135 RED WHITE & BLUE 2/12 CAN	[illegible]			
	33175 MALT DUCK GRAPE	8.40			
	33170 MALT DUCK APPLE	8.40			
	51105 BALLANTINE ALE	[illegible]			
	[illegible] ROLLING ROCK	7.50			
	[illegible] LITTLE KINGS [illegible]	[illegible]			
	40105 LITTLE [illegible]	[illegible]			
	40125 [illegible]	[illegible]			
	47185 [illegible]	14.25			
	47195 [illegible]	[illegible]			
	41145 PRIVATE STOCK 16 NR	14.25	1	14 25	4×445
	41105 PRIVATE [illegible] NR	[illegible]			
	41150 PRIVATE STOCK 40 OZ NR	15.55			

RECEIVED [illegible] 29 1985

PAID
DATE

QTY.	CREDITS	VALUE	AMOUNT	TOTAL CHARGES
	EMPTY RETURNABLE BOTTLES			LESS PROMO
				LESS CREDIT
				NET TOTAL

05 TICKET NO. 28276

STEVENS CORPORATION

S C

PHONE 448-4468 (803) NINTH AVENUE AND BROADWAY
P.O. BOX 896 MYRTLE BEACH, S.C. 29578

DATE: SATURDAY 4/13/85
RETURNED CHECKS WILL INCUR A $10.00 SERVICE CHARG
SOLD TO: RED WHITE

LICENSE NO.: CUST. NO.: [redacted] ROUTE: 05

ITEM	CODE	QTY	PRICE	AMOUNT	
COORS 24/12 OZ RET	13		11.40		
COORS 24/12 OZ NR	14		11.25		
COORS 12/12 OZ 2PK	16		10.35		
COORS 24/12 OZ 6PK 345	17	4	11.25	45	00
COORS 12/12 NR BTL	18		11.25		
COORS 24/16 OZ 6PK	20		13.30		
COORS 12/32 OZ QTS	24		11.80		
COORS LIGHT 24/12 OZ RET	33		11.40		
COORS LIGHT 24/12 OZ NR	34		11.55		
COORS LIGHT 12/12 OZ 2PK 639	36	1	10.35	10	35
COORS LIGHT 24/12 OZ 6PK 355	37	4	11.55	46	70
COORS LIGHT 12/12 NR BTL	38		11.55		
COORS LIGHT 24/16 OZ 6PK	40		13.30		
OLYMPIA 24/12 OZ RET	53		11.40		
OLYMPIA 12/12 OZ 2PK	56		11.25		
OLYMPIA 24/12 OZ 6PK	57		11.25		
OLYMPIA LIGHT 12/12 2PK	66		11.25		
OLYMPIA LIGHT 24/12OZ 6PK	67		11.25		
MAXX 24/12 OZ 6PK	97		6.50		
PABST 12/12 OZ CANS 2/PK	106		7.95		
PABST 24/12 OZ CAN 4/6	107		10.00		
PABST 24/16 OZ CAN 4/6	110		11.70		
PABST LGT 24/12OZ CAN 4/6	120		10.00		
PABST LGT 12/12 OZ CANS	122		7.95		
OLDE ENGLISH 24/16OZ 6PK	126		13.50		
OLDE ENGLISH 12/40 OZ NR	128		15.50		
COLT 45 24/16 OZ CAN 4/6	210		13.50		
COLT 45 12/40 OZ NR	213		15.50		

RECD 4 1985

RECEIVED BY: TOTAL 101 55

14

TICKET NO. 31543

STEVENS CORPORATION
PHONE 448-4468 803
P. O. BOX 936

DATE MONDAY 4/29/85

RETURNED CHECKS WILL INCUR A $10.00 SERVICE CHARG

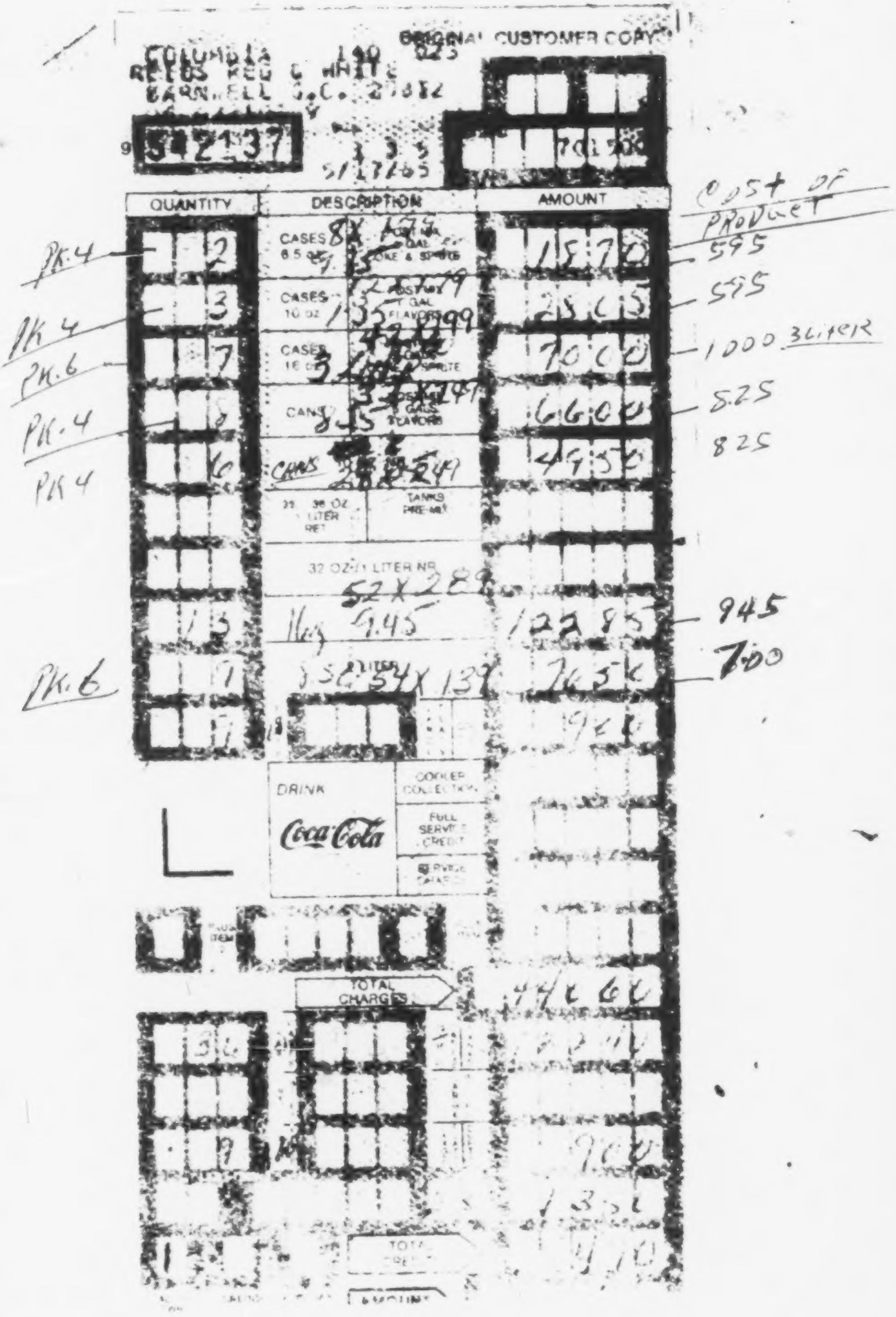
SOLD TO Redd White

LICENSE NO. CUST NO. 14

ITEM	CODE	QTY		
OLYMPIA 24/12 OZ RET	53		11.40	
OLYMPIA 12/12 OZ 2PK	56		11.25	
OLYMPIA 24/12 OZ 6PK	57		11.25	
OLYMPIA LIGHT 12/12 2PK	66		11.25	
OLYMPIA LIGHT 24/12OZ 6PK	67		11.25	
ICE MAN MALT 24/16OZ CAN	73		11.75	
ICE MAN MALT 12/40OZ BTL	74		12.50	
HAMMS 24/12 OZ 6PK	77		7.15	
HAMMS LIGHT 24/12 OZ 6PK	87		7.15	
MAXX 24/12 OZ 6PK	16x1.99 97	4	6.50	2600
PABST 24/12 OZ RET BTLS	103		11.10	
PABST 24/12 OZ NR BTL 4/6	104		9.35	
PABST 12/12 OZ CANS 2/PK	106		$\boxed{9.60}$	
PABST 24/12 OZ CAN 4/6	107		10.00	
PABST 24/16 OZ CAN 4/6	110		11.70	
PABST 12/32 OZ NR BTL	114		11.70	
PABST LGT 24/12OZ CAN 4/6	120		10.00	
PABST LGT 12/12 OZ CANS	122		9.60	
OLDE ENGLISH 24/16OZ 6PK	126		13.50	
OLDE ENGLISH 12/40 OZ NR	128		15.50	
COLT 12/12 OZ CANS 2PK	206		8.00	
COLT 45 24/16 OZ CAN 4/6	210		13.50	
COLT 45 24/16 OZ NR 4/6	212		13.50	
COLT 45 12/40 OZ NR	213		15.50	
MY LADY RED 14X	7900		18.00	
MY LADY RED 14X	7901		16.56	
MOOSEHEAD 24/12 OZ NR	9719		16.50	

RECEIVED BY Ronnie

TOTAL 2600



ORIGINAL CUSTOMER COPY

COLUMBIA 140 025
REEBS RED & WHITE
BARNWELL S.C. 29812

9 542137

3 3 5
5/17/85

70150

	QUANTITY	DESCRIPTION	AMOUNT	Cost of Product
Pk.4	2	CASES 6.5 oz 8X 179 POST MIX GAL COKE & SPRITE	1570	595
Pk 4	3	CASES 10 oz 135 22X179 POST MIX 1 GAL FLAVORS 99	2505	595
Pk.6	7	CASES 16 oz 3 Liter SPRITE	7000	1000 3Liter
Pk.4	8	CANS 825 33X249 POST MIX 5 GALS FLAVORS	6600	8.25
Pk 4	6	CANS 2X249	4950	825
		32 36 OZ 1 LITER RET / TANKS PRE-MIX		
		32 OZ-1 LITER NR 52X289		
	13	1Keg 9.45	12285	945
Pk.6	7	2 LITER 1.52 54X139	7456	7.00
	7		920	

DRINK Coca-Cola

COOLER COLLECTION

FULL SERVICE CREDIT

SERVICE CHARGE

TOTAL CHARGES 44260

96 2240

9 920

1350

13 TOTAL CREDIT 410

AMOUNT

CAROLINA Coca-Cola BOTTLING CO.

SUMTER KINGSTREE GEORGETOWN
CAMDEN LANCASTER CHESTER

SALESMAN DATE 4-12 1985
SOLD TO [redacted] Red + White
5

7	CASES Returnables	@ 750	5250
	CASES Cans	@	
	32 Oz Returnables	@	
6	16 Oz Non-Returnables	@ 865	5190
	2 Liter Non-Returnables	@	
	Cups	@	
	Tubes		
	Ice	@	
		@	
	TOTAL PURCHASE		10440

RECEIVED APR 16 1985

LESS CREDITS		AMOUNT	
	CASES MTY @		
	HULLS @		
	EXTRA BOTTLES @		
	EXTRA BOTTLES @		
	TOTAL FOR PRODUCT		
	S.C. TAX COLLECTED		
	COOLER PAYMENT COL.		
	COOLER SERVICE CHG COL.		
	TOTAL AMOUNT DUE		10440

RECEIVED BY CHARGE

MOORE BUSINESS FORMS, INC. FLORENCE, S.C.

CAROLINA Coca-Cola BOTTLING CO.

SUMTER KINGSTREE GEORGETOWN
CAMDEN LANCASTER CHESTER

SALESMAN DATE 4-15 1985
SOLD TO [redacted] Red + White

1	CASES Returnables	@ 750	750
6	CASES Cans	@ 660	3960
8	32 Oz Returnables	@ 490	3920
[illegible]	16 Oz Non-Returnables	@ 365	1730
27	2 Liter Non-Returnables	@ 5.00	13500
	Cups	@	
	Tubes		
	Ice		
3	½ Liters	@ 670	2010
	TOTAL PURCHASE		[illegible]

RECEIVED APR 24 1985

LESS CREDITS		AMOUNT	25570
	CASES MTY @		
	HULLS @		
	EXTRA BOTTLES @		
	EXTRA BOTTLES @		
	TOTAL FOR PRODUCT		
	S.C. TAX COLLECTED		
	COOLER PAYMENT COL.		
	COOLER SERVICE CHG COL.		
	TOTAL AMOUNT DUE		[illegible]

RECEIVED BY CHARGE 25870

MOORE BUSINESS FORMS, INC. FLORENCE, S.C.

DORCHESTER Coca-Cola BOTTLING COMPANY

118 SOUTH CEDAR STREET
SUMMERVILLE SOUTH CAROLINA 29483
(803) 873 1420

252

[redacted]

	PRODUCT	CODE	QTY	PRICE	TOTAL AMOUNT
6½ OZ	COCA COLA	101			
	COLA 4X1.5	102	1	5.70	5.70
10 OZ RET	COCA COLA	110			
	COCA COLA	112			
	SPRITE	114			
	TAB	115			
	FANTA GRAPE	119			
	FANTA ORANGE	118			
	TOTAL				
1 LTR RET	TAB	121			
	TOTAL				
10 OZ RET	COCA COLA 4.50	120	12	7.90	94.80
		36	x 1.79		
	TOTAL	30			
10 OZ NR	COCA COLA	201			
	TOTAL				
16 OZ NR	COCA COLA	220	40		
	[illegible]	238			
	DIET COKE	224	10		
	[illegible]	225	10	7.45	555.75
	340	221	10		
	TAB x 2.09	223	5		
	MELLO YELLO	230			
	FANTA GRAPE	237			
	FANTA ORANGE	234			
	TOTAL				
20 OZ NR	GINGER ALE	281			
	CLUB SODA	282			
	TONIC WATER	288			
	TOTAL				
2 LTR NR	COCA COLA	240	4		
	[illegible]	244			
	DIET COKE	257	3		
	[illegible]	258	1		
	SPRITE 64	243	3	7.40	75.30
	[illegible]	[illegible]	2		
	TAB 16 x 12	241	2		
	MELLO YELLO	254	2		
	GINGER ALE	250			
	TOTAL				

	PRODUCT	CODE	QTY	PRICE	TOTAL AMOUNT
3 LTR	COCA COLA	200			
	TOTAL				
6 PAK CANS	COCA COLA	301	1		
	[illegible]	313			
	DIET COKE	312	1		
	[illegible]	317			
	SPRITE	305	2		
	[illegible]	315		625.9375	
	TAB	320	1		
	[illegible]	311			
	MELLO YELLO	324	1		
	[illegible]	342			
	FANTA GRAPE	303			
	FANTA ORANGE	302	1		
	[illegible]	332			
	[illegible]	334			
	TOTAL				
12 PAK CANS	COCA COLA	357			
	DIET COKE	354			
	SPRITE	352			
	TAB	3[illegible]			
	MELLO YELLO	381			
	TOTAL				
PREMIX	COCA COLA	401			
	SPRITE	420			
	TAB	407			
	FANTA ORANGE	415			
	GINGER ALE	417			
	CLUB SODA	418			
	TONIC WATER	419			
	TOTAL				
POSTMIX GAL	COCA COLA	550			
	DIET COKE	552			
	SPRITE	554			
	SF SPRITE	581			
	TAB	553			
	MELLO YELLO	587			
	FANTA STRAW	561			
	FANTA GRAPE	562			
	FANTA ORANGE	558			
	TOTAL				

RECEIVED APR - 6 1985

	PRODUCT	CODE	QTY	PRICE	TOTAL AMOUNT
POSTMIX FIGAL	COCA COLA	650			
	DIET COKE	620			
	SPRITE	615			
	DIET SPRITE	619			
	TAB	604			
	MELLO YELLO	628			
	FANTA GRAPE	608			
	GINGER ALE	623			
	FANTA ORANGE	619			
	RAMBLIN	621			
	CLUB SODA	626			
	TONIC WATER	622			
	TOTAL				
MISC	[illegible]	850			
	[illegible]	865			
	[illegible]				
	[illegible]				
	[illegible]				
	[illegible]				
	FLATS	710	63	1.00	63
SPECIAL ITEMS	SALES TAX				
	[illegible]	914			
	A.R. COLLECTION	949			
	TOTAL CHARGES	$			
CREDITS	EMPTIES	701	15	3.80	57
	BOTTLES	702			
	BOTTLES	703			
	FLATS	710	37	1.00	37
	CO2 DEPOSIT	715			
	TANK DEPOSIT	716			

TOTAL CREDIT	$ 95
NET DUE	$ 806.5

RECEIVED BY M F Blum

SALESMAN

ORIGINAL

MFG UPC NO > COKE 49000 BARQS 71102 NESBIT 41545 SCHWEPPS 19800

PHONE 757-2524

THE SAVANNAH COCA-COLA BOTTLING CO.
102 COLEMAN BLVD. P.O. DRAWER 488 SAVANNAH, GA 31402 (912) 748-0033

TAX NO.

SCOTT'S MEAT MKT
HWY 46
BLUFFTON SC 29910

EMARKS MR SCOTT

58890	2-2	CASH	050185	00	510160			58890

SPECIAL INSTRUCTIONS

						DELIVERY ADJUSTMENTS		
201	COKE 6.5 RET CTN	[illegible]	2	5,00	10,00			
210	COKE 32 OZ RET 6 PAK	0000490510	6	5,50	33,00			
[illegible]	GINGER ALE 10 NR CTN	[illegible]	1	8,25	8,25			
4V2	CLUB SODA 10 NR CTN	1600051470	2	8,25	16,50			
3UL	TONIC WATER 1L NR P/B CS	[illegible]	4	8,95	35,80	(4)	(35 80)	
31N	COKE 2L N/R PET CS	4900000546	20	8,50	170,00			
3AN	SPRITE 2L N/R PET CS	[illegible]	3	8,50	25,50			
3AN	BARQS RB 2L NR PET CS	7170210367	2	8,50	17,00			
[illegible]	ORANGE SC 2L PET CS	[illegible]	2	8,50	17,00			
31N	NUGRAPE 2 L NR PET CS	4154500086	1	8,50	8,50			
3JN	GINGER ALE 2L NR PET CS	[illegible]	2	8,50	17,00			
3KN	MELLO YELLO 2L NR PET CS	4900000726	1 3	8,50	8,50			
[illegible]	DIET COKE 2L PET CS	[illegible]	4	8,50	34,00			
38N	C FREE COKE 2L NR PET CS	[illegible]	1	8,50	8,50			
[illegible]	[illegible]	[illegible]	2	8,50	17,00			
613	COKE CANS 6 PAK	[illegible]	15	8,25	123,75			
645	SPRITE CANS 6 PAK	[illegible]	4	8,25	33,00			
643	R BEER BARQ CANS 6 PAK	[illegible]	1	8,25	8,25			
6M5	ORANGE SC CANS 6 PAK	[illegible]	1	8,25	8,25			
613	NUGRAPE CANS 6 PAK	4154500069	1	8,25	8,25			
683	DIET COKE CANS 6 PAK	[illegible]	10	8,25	82,50			
683	CAFFEINE F COKE CANS-6	[illegible]	2	8,25	16,50			

RETURNABLE CREDITS TOTAL CASES

DESCRIPTION	UPC CODE	QTY	@	AMOUNT
mpties - Bottles & Case	49000 99031			
mpties	49000 99021			
ttles Only - 6½, 10, 16	49000 99001			
ttles Only - 32 oz	49000 99002			
mpty CO2 Tanks				
		TOTAL EMPTY CREDITS		

CHARGES	CONTINUED
TOTAL ADJUSTMENT	
SUB TOTAL	
LESS EMPTY CREDITS	
TOTAL NET CHARGE	

STORE STAMP

LESMAN-DRIVER	RECEIVED BY
VOYLES WELDON R NO. 061	

PHONE 757-6969 102 COLEMAN BLVD · P.O. DRAWER 488 · SAVANNAH, GA 31402 · (912) 748-0033 TAX NO.

SCOTT'S MEAT MKT
HWY 46
BLUFFTON SC 29910

REMARKS MR SCOTT

58896	202	CASH	050185	00	510166	58890

SPECIAL INSTRUCTIONS

DELIVERY ADJUSTMENTS

	CONTINUATION				
693	CAFFEINE F DIET COKE CAN	0000499290	3	8,25	24,75
	PROMOTION ALLOWANCES				
31N	COKE 2L N/R PET CS	4900000546	20	2,750-	55,00-
34N	SPRITE 2L N/R PET CS	4900000951	3	2,750-	8,25-
3AN	BARQS RB 2L NR PET CS	7170210367	2	2,750-	5,50-
3MN	ORANGE SC 2L PET CS	4154500624	2	2,750-	5,50-
3IN	NUGRAPE 2 L NR PET CS	4154500084	1	2,750-	2,75-
3JN	GINGER ALE 2L NR PET CS	1600051318	2	2,750-	5,50-
3QN	DIET COKE 2L PET CS	0000496636	4	2,750-	11,00-
38N	C FREE COKE 2L NR PET CS	4900000951	1	2,750-	2,75-
39N	CF DIET COKE 2L NR PT CS	4900000938	2	2,750-	5,50-
613	COKE CANS 6 PAK	4900000064	15	2,000-	30,00-
643	SPRITE CANS 6 PAK	4900000138	4	2,000-	8,00-
6A3	R BEER BARQ CANS 6 PAK	7170810028	1	2,000-	2,00-
6M3	ORANGE SC CANS 6 PAK	4154500193	1	2,000-	2,00-
6I3	NUGRAPE CANS 6 PAK	4154500069	1	2,000-	2,00-
6Q3	DIET COKE CANS 6 PAK	0000496580	10	2,000-	20,00-
683	CAFFEINE F COKE CANS-6	0000499450	2	2,000-	4,00-
693	CAFFEINE F DIET COKE CAN	0000499290	3	2,000-	6,00-
	TOTAL PROMOTIONS		74		175,75-
	DEPOSITS				

RETURNABLE CREDITS · TOTAL CASES

DESCRIPTION	UPC CODE	QTY	@	AMOUNT
Empties · Bottles & Case	49000 99031			
Empties	49000 99021			
Bottles Only · 6½, 10, 16	49000 99001			
Bottles Only · 32 oz	49000 99002			
Empty CO2 Tanks				
		TOTAL EMPTY CREDITS		

CHARGES	CONTINUED
TOTAL ADJUSTMENTS	
SUB TOTAL	
LESS EMPTY CREDITS	
TOTAL NET CHARGE	

STORE STAMP

SALESMAN DRIVER

VOYLES WELDON R NO. 061

RECEIVED BY

THE SAVANNAH COCA-COLA BOTTLING CO.
102 COLEMAN BLVD · P.O. DRAWER 488 · SAVANNAH, GA 31402 · (912) 748-0033

PHONE 757-2524

TAX NO.

SCOTT'S MEAT MKT
HWY 46
BLUFFTON SC 29910

MR SCOTT

58896	202	CASH	050189	00	510160	58896

SPECIAL INSTRUCTIONS

DELIVERY ADJUSTMENTS

CONTINUATION				
24 POCKET	4900099031	8	3.40	27.20
BEVERAGE AMOUNT	584.99			

RETURNABLE CREDITS

TOTAL CASES 90

DESCRIPTION	UPC CODE	QTY	$	AMOUNT
mpties : Bottles & Case	49000 99031	(10)	340	(3400)
mpties	49000 99021			
ottles Only : 6½ 10 16	49000 99001			
ottles Only : 32 oz	49000 99002			
mpty CO2 Tanks				

TOTAL EMPTY CREDITS (3400)

CHARGES	583.25	(3580)
TOTAL ADJUSTMENTS	(3580)	(3580)
SUB TOTAL	54745	
LESS EMPTY CREDITS	(3400)	
TOTAL NET CHARGE	51345	

7 2 1
58325
3580
54745
34
51345

STORE STAMP

SALESMAN DRIVER
VOYLES WELDON R NO. 061

RECEIVED BY

```
    ATLANTIC SOFT DRINK CO.
           JEDBURG
           HWY 78
   SUMMERVILLE, SC 29483
 RT 18  EMP 44083  TM 10 14

       DATE  03/16/85

 CUST 100237 INV 04218 7505

 [redacted]

   DESC           UPC
   QTY PRICE PROMO    AMOUNT
 1LR  PEPSI  1200000241
     +9  5.50  1.00   +40.50
     +9  3.40   DEP   +30.60

 1LR  D PEPS 1200000242
     +1  5.50  1.00    +4.50
     +1  3.40   DEP    +3.40

 2LNR PEPSI  1200000230
     +3  8.50  2.08   +19.26
     +3  1.00   DEP    +3.00

 2LNR 7-UP   7800010034
     +3  8.50  2.08   +19.26
     +3  1.00   DEP    +3.00

 2LNR D 7-UP 7800010075
     +1  8.50  2.08    +6.42
     +1  1.00   DEP    +1.00

 2LNR SFP FR 1200000527
     +1  8.50  2.08    +6.42
     +1  1.00   DEP    +1.00

 2LNR MT DEW 1200000233
     +1  8.50  2.08    +6.42
     +1  1.00   DEP    +1.00

 3 LT MT DEW 1200000921
     +1 10.00         +10.00

 16NR PEPSI  1200010028
     +1  9.45          +9.45

 16NR 7-UP   7800011047
     +1  9.45          +9.45

 HLR  PEPSI  1200000348
     +2  5.50         +11.00
     +2  3.40   DEP    +6.80

 HLR  D PEPS 1200000352
     +1  5.50          +5.50
     +1  3.40   DEP    +3.40

   RETURNS
 2 LTR FLATS
    -9  1.00           -9.00
       RECEIVED MAR 19 1985

 EMPTIES
   -34  3.40         -115.60

 TTL SLS QTY  +25

         GROCERY
 By_______________Date______

        THANK  YOU

 TTL SLS              +148.18
 SLS TAX  00.00%         +.00
 DEPOSIT               +53.20
 RETURNS              -124.60
                   ----------
 CHARGE  TTL DUE       +76.78

 STORE STAMP        TM 10:14
 Bessie Smith
```

```
    ATLANTIC SOFT DRINK CO.
          BEAUFORT
        HIGHWAY 280
 BURTON               SC 29902
 RT 57  EMP 43725  TM 10 12

       DATE  04/19/85

 [redacted]

 [redacted]

   DESC           UPC
   QTY PRICE PROMO    AMOUNT
 3 LT PEPSI  1200000917
     +9 10.00  2.50   +67.50

 3 LT D PEPS 1200000918
     +1 10.00  2.50    +7.50

 3 LT 7-UP   7800000144
     +1 10.00  2.50    +7.50

 3 LT MT DEW 1200000921
     +1 10.00  2.50    +7.50

 CANS D PEPS 1200000051
     +2  8.25  2.00   +12.50

 CANS PEPSI  1200000014
     +1  8.25  2.00    +6.25

 CANS D 7-UP 7800011166
     +1  8.25  2.00    +6.25

 CANS GRAPE  4171012344
     +2  8.25  2.00   +12.50

 CANS STR-BR 4171013344
     +2  8.25  2.00   +12.50

 CANS CD GA  1690000013
     +1  8.25  2.00    +6.25

 2LNR PEPSI  1200000230
     +6  8.50  3.15   +32.10
     +6  1.00   DEP    +6.00

 2LNR MT DEW 1200000233
     +1  8.50  3.15    +5.35
     +1  1.00   DEP    +1.00

 2LNR DT ORA 4171019288
     +1  8.50  3.15    +5.35
     +1  1.00   DEP    +1.00

 TTL SLS QTY  +29


      RECEIVED APR 23 1985
        THANK  YOU

 TTL SLS              +189.05
 SLS TAX  00.00%         +.00
 DEPOSIT                +8.00
 RETURNS                 0.00
                   ----------
 CHARGE  TTL DUE      +197.05

 SIGNATURE          TM 10 12
```

RECEIVED APR 9 1985

```
[illegible]

[redacted]

[illegible]

        THANK YOU

[illegible]
```

```
ATLANTIC SOFT DRINK CO.
        BEAUFORT
      HIGHWAY 280
BURTON              SC 29902
RT 57  EMP 41725  TM 11 46

      DATE  04/26/85

CUST 217521 INV 0415711603

[redacted]

   DESC          UPC
  QTY PRICE PROMO    AMOUNT
3 LT PEPSI  1200000917
  +12 10.00  2.50    +90.00

2LNR PEPSI  1200000230
   +6  8.50  3.15    +32.10
~~   +6  1.00   DEP     +6.00~~

2LNR P FREE 1200000522
   +2  8.50  3.15  [illegible]
   +2  [illegible]  EP     +2.00

2LNR 7-UP   7800010034
   +2  8.50  3.15    +10.70
   +2  1.00   DEP     +2.00

2LNR MT DEW 1200000233
   +1  8.50  3.15     +5.35
   +1  1.00   DEP     +1.00

2LNR D 7-UP 7800010075
   +1  8.50  3.15     +5.35
   +1  1.00   DEP     +1.00

2LNR CD GA  1690001601
   +2  8.50  3.15    +10.70
   +2  1.00   DEP     +2.00

2LNR HIRESR 4171041278
   +1  8.50  3.15     +5.35
   +1  1.00   DEP     +1.00

3 LT D PEPS 1200000918
   +1 10.00  2.50     +7.50

3 LT 7-UP   7800000144
   +2 10.00  2.50    +15.00

3 LT MT DEW 1200000921
   +2 10.00  2.50    +15.00

TTL SLS QTY  +32



      THANK YOU

TTL SLS              +207.75
SLS TAX  00.00%         +.00
DEPOSIT               +15.00
RETURNS                 0.00
                  ----------
CHARGE  TTL DUE      +222.75

SIGNATURE           TM 11 46
```

RECEIVED APR 30 1985

6/6/6/6

PEPSI-COLA BOTTLING COMPANY
Phone 354-7264 P. O. Box 949
Kingstree, S. C. 29556

22374

Date 4-22 1985

Sold To [redacted]

Address

MFG UPC #	UPC #	PC CODE #	QTY	DESCRIPTION	RETAIL PRICE	COST PRICE	TOTAL COST	
12000	00010	01012		12 oz. Pepsi Ret.				
12000	00028	01032	30	32 oz. Pepsi Ret.		770	231	00
12000	00082	10012		12 oz. Mt. Dew Ret.				
73052	14016	13012		12 oz. Red Rock Ret.				
12000	00043	03012		10 oz. Diet Pepsi Ret.				
75170	31014	09010		10 oz. Sunkist Ret.				
54900	00105	11010		10 oz. Dr. Pepper Ret.				
54900	00500	12010		10 oz. S/F Dr. Pepper Ret.				
12000	00230	01167	2	2 Ltr. Pepsi Cola NR	159	1065	53	25
12000	00492	01167	1	2 Ltr. Pepsi Free NR	159	1065		
12000	00231	⑤ 03167		2 Ltr. Diet Pepsi NR				
12000	00496	16167		2 Ltr. S/F Pepsi Free NR ⑤				
12000	00233	10167	2	2 Ltr. Mtn. Dew NR	159	1065		
54900	00060	11167		2 Ltr. Dr. Pepper NR				
54900	00061	12167		2 Ltr. S/F Dr. Pepper NR				
75170	00004	09167		2 Ltr. Sunkist Orange NR				
75320	12024	14167		2 Ltr. Diet Sunkist Orange NR				
12000	10028	01116	1	16 oz. Pepsi Cola NR	6 - 269	865		
12000	00498	15116		16 oz. Pepsi Free NR				
12000	10041	03116	1	16 oz. Diet Pepsi NR	6 - 269	865		
12000	00501	16116		16 oz. S/F Pepsi Free NR ④			34	60
12000	10071	10116		16 oz. Mt. Dew NR				
54900	01010	④ 11116	1	16 oz. Dr. Pepper NR	6-269	865		
41545	10041	02116		16 oz. NuGrape NR				
41545	12171	02116		16 oz. Suncrest Strawberry NR				
75170	51034	09116		16 oz. Sunkist Orange NR				
			1	16 oz Slice	6-269	865		
12000	00014	01312	3	12 oz. Pepsi Cans	6-239	800		
12000	00490	15112		12 oz. Pepsi Free Cans				
12000	00051	03312		12 oz. Diet Pepsi Cans				
12000	00494	16112	2	12 oz. S/F Pepsi Free Cans	6-239	800	96	00
12000	00476	04312		12 oz. S/F Pepsi Light Cans				
12000	00086	10312	2	12 oz. Mt. Dew Cans	6 - 239	800		
61545	00069	02312	2	12 oz. NuGrape Cans	6-239	800		
75170	00001	09312	2	12 oz. Sunkist Orange Cans	6 239	800		
75320	22084	14312		12 oz. Diet Sunkist Orange Cans				
43000	00690	08312		12 oz. C. T. Lemonade Cans				
48300	26801	07312		12 oz. Haw. Punch Cans				
54900	00029	11312	1	12 oz. Dr. Pepper Cans	6			
54900	00030	12312		12 oz. S/F Dr. Pepper Cans				
	69318	74012		12 oz. Empties				
	69322	74032		32 oz. Empties				
	69266	40412		Empty Shells				
				CREDITS	AMOUNT PURCHASED	➧	414	95
	69320	74012	50	12 oz. Empties 220	110	00	- 194	00
	69324	74032		32 oz. Empties				
		70012		12 oz. Bottles				
	69280	70032		32 oz. Bottles			220	95
		40412		Empty Shells				
				Deposit on 32s	84 00			
				Credits	194 00			
				Total Credits				
				Total Purchase				

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Mr. BOYLSTON. Here are some examples: My Budweiser wholesaler sells me Budweiser at $11.20 a case. Another Budweiser wholesaler in South Carolina has a regular price of $11.05, but right now he is running a special at $9.50. This wholesaler is known for doing more dealing. I would like to be able to buy from him, but the law prohibits me.

Let me show you what wholesaler competition can do for most of the other products I sell. One wholesaler offers me private label Red and White corn, at $9.44 a case. I got on the phone the other day and found the exact same product, Red and White merchandise, that I can buy from another distributor in my area for $8.17 a case, a savings of $1.27 a case, 13 percent.

Another example: One wholesaler offers 5-pound bags of Dixie Crystal sugar at $19.22 a bale. I can get it at $18.35 from another wholesaler. My point is I am able in the grocery business to decide who I buy sugar, corn, whatever, from, but I am not able to do that with soft drinks and beer.

The difference may not seem that great in some of these prices, but on a product like sugar that we sell at or below cost, it is a tremendous thing. I am afraid that if the beer bill passes, other industries will want to be protected, too. Then I will not be able to find better prices on the other products like corn and sugar that I gave you.

Small retailers are not guaranteed better service with exclusive territories for beer wholesalers. Since before passage of South Carolina's law, some small retailers have had to come to my store to pick up their deliveries; they still do. In fact, a lot of them can come to my store and buy it from me cheaper than they can get it from the wholesaler because I sell beer at such a low margin.

This is particularly true for the small rural retailers. The beer wholesalers are unwilling to deliver to them at a time that is convenient to the retailer; a lot of them have strange hours.

If we grocers have to compete, other wholesalers have to compete. Beer wholesalers already have less competition than we do. They do not need more protection.

In summary, the bill is not only unnecessary, but affirmatively harmful. The bill would decrease service and increase costs to retailers and consumers. Exclusive territories in the beer industry have been found to increase prices to consumers by approximately 20 percent.

Make no mistake about it; the intent and the end result of this legislation is to promote exclusive territories in beer distribution. The precedent created by this legislation will create considerable pressure for the Congress to carve out additional exemptions from antitrust laws for other suppliers of food and grocery products.

The beer industry has not been the subject of any court decision, as the soft drink industry was, in which exclusive territories were found to be illegal under the conditions of that industry.

The beer industry already enjoys significant protection not afforded to the soft drink or other industries. Moreover, the beer industry has experienced only a modest amount of litigation.

A few minutes ago, the automobile industry was mentioned as being a very competitive industry. It is very competitive. They have foreign competition, as I have at the retail level in the food business.

But, also, if I want to buy an Oldsmobile, I can go buy it from dealer A, B, C, or D. I can even go out of my State and buy an Oldsmobile. If my Oldsmobile distributor in Barnwell knew that the only place I could get an Oldsmobile was from him, even though I could get a Chrysler and a Ford and a Chevrolet—if the only place I could get an Oldsmobile was from him, I do not have to tell you that that would make the price of Oldsmobiles go up.

I would like to let some of the other members of my panel say a few words.

[The prepared statement follows:]

STATEMENT OF JAMES REID BOYLSTON, III
REID'S RED AND WHITE
BARNWELL, SOUTH CAROLINA

for the FOOD MARKETING INSTITUTE
before the COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on S. 412
THE MALT BEVERAGE INTERBRAND COMPETITION ACT

May 14, 1985

* * * * * * * * * * * * * * *

Thank you Mr. Chairman. I am Reid Boylston, I own and operate a supermarket in Barnewll, South Carolina called Reid's Red and White.

I'll introduce the other members of our panel - to my left is Lee Markwell of Louisville, Kentucky who operates Markwell's Pic Pac grocery stores, and to his right is Christy Spoa of Spoa's Fine Foods in Ellwood City, Pennsylvania. At the end is Charles MacDonald, Executive Director of the Alabama Retail Association.

We are here on behalf of ourselves and the Food Marketing Institute to testify against S. 412. And to my right are Robert Aders President of FMI and Harry Sullivan, FMI's Senior Vice President for Public Affairs and General Counsel.

We have submitted for the record a written statement which includes a legal analysis and an in-depth information packet. The legal analysis shows that exclusive territories for beer have not been the subject of a great volume of litigation as proponents claim. In fact, since the GTE Sylvania decision in 1977 which holds that pro-competitive exclusive territories are legal, there have been only five reported cases, all of which were decided in favor of exclusive territories.

Since our time is limited, we want to share with you some personal, real-life examples that show how exclusive territories are anti-competitive, and therefore, why the Committee should not act favorably on S. 412.

Competition between wholesalers means that I can be competitive with my competition.

Here are some examples. My Budweiser wholesaler sells me Bud at $11.20 a case. Another Budweiser wholesaler in South Carolina has a regular price of $11.05, but right now is running a special at $9.50 a case. This wholesaler is known for doing more dealing, and I'd like to be able to buy from him, but the law prevents me.

Let me show you what wholesaler competition can do for most of the other products I sell. One wholesaler offers me private label canned corn at $9.44 a case. But I got on the phone and found the exact same product at $8.17 a case from another wholesaler. A savings of $1.27 a case - fully 13 percent cheaper.

Another example. One wholesaler offers 5 lb. bags of Dixie Crystal Sugar at $19.22 a bale. I can get it for $18.35 from another wholesaler. The difference may not seem great, but in our business of one percent profits every penny counts, particularly on products like sugar which are sometimes sold at cost or even below cost. I need to look for the very best bargains possible, because if I don't, my customers will go to a competitor who does.

I'm afraid that if the beer bill passes, other industries will want to be protected too. Then I won't be able to find the better price on other products like the corn and sugar examples I gave you.

Small retailers aren't guaranteed better service with exclusive territories for beer wholesalers. Since before passage of South Carolina's law, some small retailers have had to come to my store to pick up their deliveries

because the beer wholesaler was unwilling to deliver at a time convenient to the retailer. This is particularly true for small, rural retailers. South Carolina's law has not changed this at all. With competition the wholesalers would have more an incentive to serve all their accounts, large and small.

We grocers have to compete, other wholesalers have to compete. Beer wholesalers already have less competition then we do - they don't need more protection. Please do not act favorably on S. 412.

Thank you for the opportunity to be before you today.

Responses by Reid Boylston to written questions provided by the Senate Judiciary Committee following the May 14, 1985 hearing on the Malt Beverage Interbrand Competition Act.

1. Question: How many brands of beer does your store carry? How many distributors supply your beer?

Answer: I carry fifteen different labels which are delivered to me by four wholesalers.

2. Question: If you reside in one of those states with laws regarding exclusive territories for beer distribution, would you describe the experience of your prices before and after the enactment of those laws?

Answer: South Carolina enacted an exclusive territory law for beer wholesaling in 1983. Beer prices have increased. Even though the prices of other products have also increased I know I have paid more for beer. For example, wholesalers no longer offer the kinds of discounts or deals as before. They no longer have the same degree of incentive. It is also my observation that the level of service provided by beer wholesalers has declined for the smaller rural retailers.

3. Question: What effect do you think this bill would have on beer prices?

Answer: Beer prices will increase, particularly in those states that do not require exclusive territories. I gave examples in my testimony of how I presently can shop among wholesalers for the best price on private label canned corn and Dixie Crystal sugar. If I lose this ability, the prices on these products would obviously increase. This is what would happen to beer in those neutral states if exclusive territories are locked in by the federal sanction granted by a federal beer bill.

Responses by Lee Markwell to written questions provided by the Senate Judiciary Committee following the May 14, 1985 hearing on the Malt Beverage Interbrand Competition Act.

1. Question: How many brands of beer does your store carry? How many distributors supply your beer?

Answer: In one of my three stores I carry 75 brands - 58 of them are imported. Only five wholesalers distribute these 75 varieties. In my other two stores I stock 25 kinds of beer and these are delivered by four wholesalers.

2. Question: If you reside in one of those states with laws regarding exclusive territories for beer distribution, would you describe the experience of your prices before and after the enactment of those laws?

Answer: Kentucky has exclusive territories, but the law was passed before I began in the grocery business 13 years ago. So I don't know what occured to beer prices when the law changed. However, I have spoken with acquaintances in nearby Indiana who are retailers and who tell me the price of beer declined in the mid-seventies when like-brand competition among wholesalers began to break up exclusive territories.

3. Question: What effect do you think this bill would have on beer prices?

Answer: The bill would further protect beer wholesalers from competition, so I can only see an inflationary effect.

Responses by Christy Spoa to written questions provided by the Senate Judiciary Committee following the May 14, 1985 hearing on the Malt Beverage Interbrand Competition Act.

1. Question: How many brands of beer does your store carry? How many distributors supply your beer?

Answer: Pennsylvania law does not allow grocery stores to sell beer.

2. Question: If you reside in one of those states with laws regarding exclusive territories for beer distribution, would you describe the experience of your prices before and after the enactment of those laws?

Answer: Since I don't sell beer I can't comment directly on Pennsylvania's experience regarding beer. However, it is clear to me what would happen if the cheese industry, for example, received similar protections. When I testified I related how I can achieve lower costs on Land O' Lakes varieties of cheeses by checking different wholesalers' prices. I can see that if I were forced to deal with only one Land O' Lakes distributor, prices would rise because his competition would be lessened, and therefore, he would have less incentive to be price competitive.

3. Question: What effect do you think this bill would have on beer prices?

Answer: When I look at the wholesalers of other products and how they have to set their prices, taking into account the several levels of competition they face, it is evident that if you reduce competition you will afford the remaining players an opportunity to be less competitive regarding prices; therefore, prices will rise. The beer bill further reduces competition and therefore would push prices up.

Responses by Charles McDonald to written questions provided by the Senate Judiciary Committee following the May 14, 1985 hearing on the Malt Beverage Interbrand Competition Act.

1. Question: How many brands of beer does your store carry? How many distributors supply your beer?

Answer: As Executive Director of the Alabama Retail Association, I do not operate a store, but the members of the Association do carry beer.

2. Question: If you reside in one of those states with laws regarding exclusive territories for beer distribution, would you describe the experience of your prices before and after the enactment of those laws?

Answer: Just one year ago, Alabama enacted an exclusive territory law for beer wholesalers. As I said in my testimony, since enactment beer prices have increased in the smaller towns in Alabama. This is because smaller distributors have been bought out by large distributors, and competition has thereby been diminished.

It bears repeating that after passage of the Soft Drink Interbrand Competition Act in 1980, between July 1980 and April 1983, Coca-Cola and Pepsi prices increased 23.2 percent and 36.3 percent, respectively. During the same period the Federal Index of food went up 12.7 percent. Exclusive territories mean higher prices.

3. Question: What effect do you think this bill would have on beer prices?

Answer: I think it would have an inflationary effect. But in addition, as I said in my testimony, Alabama's experience is that smaller beer wholesalers began being acquired by larger wholesalers. Passage of federal legislation sanctioning exclusive territories would likely encourage the acquisition of smaller wholesalers by big wholesalers.

Senator DeConcini. Gentlemen, we are pressed on time, but I understand you—I see from the record here that these are very short statements. We will put them in the record in full and if you want to just use a minute or so to express your views on the legislation, you may proceed, whoever wants to lead off.

Mr. Markwell. My name is Lee Markwell and I thank you for the opportunity of being here today. I am the owner of three small supermarkets in Louisville, KY. I believe the success of my business is based on the fact that I have been able to pick and choose who I buy from.

If this legislation sets a precedent for other industries, that right and privilege is going to be taken away. This is not in my best interest or in the best interests of my customers, the American public.

At the present time, for example, my grocery supplier charges me $57.25 for a case of 1-pound Maxwell House coffee. If I so choose, I can go outside the State to Illinois and buy the same coffee for $54.72 a case, a savings of $2.53 a case which I can pass on to my customers.

In Kentucky right at the present time, the beer distributors have protected areas, but just a few miles away in Indiana the retailers are able to buy at cheaper prices because there are not any controls.

For example, in Kentucky this week, I checked right before I left home; Miller Lite in Kentucky costs me $8.90 a case. In Indiana, the same beer costs $7.15. That is about 20 percent less. Budweiser this week in Kentucky costs $8.55. In Indiana, the same beer costs $7.25 a case, about 15 percent cheaper. Old Milwaukee in Kentucky, $6.20 a case; in Indiana, the same beer, $5.00 a case, about 19 percent less.

This legislation is not fair; it is not American. The end result of the bill is the American consumer will pay the price.

Thank you.

[The prepared statement follows:]

STATEMENT OF LEE MARKWELL
MARKWELL'S PIC PAC
LOUISVILLE, KENTUCKY

for the FOOD MARKETING INSTITUTE
before the COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on S. 412
THE MALT BEVERAGE INTERBRAND COMPETITION ACT

May 14, 1985

Thank you for the opportunity to be here today. I operate three Markwell's Pic Pac grocery stores in Louisville, Kentucky.

It is not right to give one business a privileged position or competitive advantage in the marketplace. The beer bill does just that and that is why I oppose it.

In Kentucky we have exclusive beer territories and I look at our neighboring Indiana and see that retailers there have the freedom to buy particular brands of beer from whichever wholesaler they want to. This is the way it is for other products, Indiana shows it can work for beer too.

Let me give you an example of how I can shop among wholesalers for coffee.

My local supplier today charges me $57.25 for a case of Maxwell House Coffee. A supplier in Illinois has a price of $54.72 - not as great a savings as I sometimes see, but still important, so I will buy from him.

To echo what Reid Boylston said, if the beer industry gets this exemption, which industry will be next? Will my business freedom to buy Maxwell House Coffee in Illinois be taken away? Passing the beer bill would be a terrible precedent.

I buy the products I sell at the best possible price so that I can, I hope, have better prices than my competition. If I don't offer the best possible prices, I lose customers. Of course this is fair because my competitors are faced with the same situation. We all have to be efficient and work hard at being competitive on price as well as service. There is no reason beer wholesalers should be given even more protection - they are already less competitive than other wholesalers and less competitive than we retailers.

If the Committee looks favorably on the beer bill, other industries, perhaps coffee, will look for special protection too. In that case, there is no reason we retailers should not have guaranteed markets as well.

Thank you, Mr. Chairman, it is a privilege to testify before your committee.

Senator DeConcini. Thank you.

Mr. McDonald.

Mr. McDonald. Mr. Chairman, members of the committee, I am Charles McDonald, executive director of the Alabama Retail Association.

In May 1984, the Alabama Legislature passed a bill to require exclusive sales territories for beer wholesalers over the strong objections of our organization. This bill helped about 50 beer wholesalers and damaged about 10,000 retailers and over two million consumers of beer in our State.

This morning, I would like to tell you some of the arguments that we used in opposition to this bill before the legislature and what has happened to beer prices since this bill was enacted about 1 year ago today.

First, one of the arguments that the beer wholesalers used in Alabama was that in 1980, the U.S. Congress had passed similar legislation for the soft drink industry. Indeed, Congress had, and this is what happened to prices from July 1980 to April 1983, as reported to me by a survey I made among our members.

During this period, July 1980 to April 1983, the Federal index of food for home consumption rose from 251.5 to 283.4, an increase of 12.7 percent. During this same period, again as reported to me by retailers in Alabama that I surveyed, a case of 24 12-ounce cans of Pepsi went from $5.65 per case to $7.70 per case, an increase of 36.3 percent.

A case of 24 12-ounce cans of Coke went from $6.25 per case to $7.70 per case, an increase of 23.2 percent. So other foodstuffs went up about an average of 12.7 percent, while Pepsi went up about 36 percent and Coke 23 percent. That was, we feel, a significant difference.

Now, let us look at what has happened to beer distribution and beer prices since the exclusive sales territory bill passed the Alabama Legislature in May 1984. To prepare for this testimony, I called two large grocery chains which operate throughout Alabama. They both reported to me that, one, a number of smaller beer wholesalers had been bought out by the larger distributors; and, two, that beer prices had increased in the smaller towns of our State.

Once, there was a great diversity of prices from town to town, county to county. But, today, prices are fairly well uniform, and this uniformity has meant higher prices in many of our smaller communities.

I will limit my remarks, though, and conclude, Senator, by simply saying that I hope this committee will look with disfavor on this bill. I hope that what has happened to retailers and those who enjoy drinking beer in Alabama will not happen to others in this Nation.

Senator DeConcini. Thank you, Mr. McDonald. Your full statement will appear in the record.

[The prepared statement follows:]

STATEMENT OF CHARLES McDONALD
ALABAMA RETAIL ASSOCIATION
MONTGOMERY, ALABAMA

for the FOOD MARKETING INSTITUTE
before the COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on S. 412
THE MALT BEVERAGE INTERBRAND COMPETITION ACT

May 14, 1985

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Mr. Chairman, members of the Committee, I am Charles McDonald, Executive Director of the Alabama Retail Association.

In May 1984, the Alabama Legislature passed a bill to require exclusive sales territories for beer wholesalers over the strong objections of the Alabama Retail Association. This bill helped about 50 beer wholesalers and hurt about 10,000 retailers and over 2,000,000 consumers of beer in our state.

This morning I would like to tell you a few of the arguments we used in opposition to this bill before the Alabama Legislature, and what has happened to beer prices since this bill was enacted about one year ago today.

First, one of the arguments that the beer barons used in Alabama was that in 1980 the U.S. Congress had passed similar legislation for the soft drink industry. Indeed you had, and this is what happened to soft drink prices from July 1980 to April 1983, as reported to me by a survey I made among our members:

> During this period - again July 1980 to April 1983 - the Federal Index of food for home consumption rose from 251.5 to 283.4 -- an increase of 12.7 percent. During this same period, as reported to me by retailers in Alabama, a case of 24 - 12 oz. cans of Pepsi went from \$5.65 per case to \$7.70 per case - an increase of 36.3 percent. A case of 24 - 12 oz. cans of Coke went from \$6.25 per case to \$7.70 per case - an increase of 23.2 percent. So other foodstuffs went up an average of 12.7 percent while Pepsi went up 36.3 percent and Coke 23.2 percent. Quite a difference.

Now let's look at what has happened to beer distribution and beer prices since the exclusive sales territory bill passed the Alabama

Legislature in May 1984. To prepare for this testimony I called two large grocery chains which operate throughout Alabama. They both reported to me that:

> One, many smaller beer wholesalers had been bought out by the larger distributors; and two, that beer prices had increased in the smaller towns of our state. Once there was a great diversity of prices from town to town, county to county. But today prices are fairly well uniform - this uniformity meaning raised prices in our smaller communities.

You don't go through a full-scale legislative fight without learning something - the truth finally comes out. What I learned was why the beer wholesalers wanted this bill in Alabama. There are two ways to increase your sales in markets you don't now serve - one, expand; two, buy out your competition.

The large beer wholesaler wanted this bill because he could protect his existing territory and because he could buy out his smaller competitors and know he had a protected territory. The small wholesaler wanted it because he could protect his territory and have a saleable asset protected by law that no one could compete with. They had a win-win situation.

I hope this Committee will look with disfavor on this bill. I hope that what has happened to retailers and those who enjoy drinking beer in Alabama won't happen to others in this nation.

Senator SPECTER. Senator DeConcini, I wonder if I might interrupt for just a moment to ask Mr. Christy Spoa a question.

Senator DECONCINI. Yes. He is going to testify next, Senator. If you want to go ahead and ask him a question, that is fine with me.

Senator SPECTER. Well, I will wait until his testimony.

Senator DECONCINI. Mr. Spoa, you may proceed. Your full statement will appear in the record, Mr. Spoa.

[The prepared statement follows:]

STATEMENT OF CHRISTY SPOA
SPOA'S FINE FOODS
ELLWOOD CITY, PENNSYLVANIA

for the FOOD MARKETING INSTITUTE
before the COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on S. 412
THE MALT BEVERAGE INTERBRAND COMPETITION ACT

May 14, 1985

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Mr. Chairman, thank you, I appreciate the opportunity to be here today. I own and operate Spoa's Fine Foods, a grocery store in Ellwood City, Pennsylvania.

In Pennsylvania, state law prohibits grocery stores from selling beer. Nevertheless, I oppose S. 412 because I don't want to see the precedent of the beer bill antitrust exemption encourage the wholesalers of other products to seek similar protection. The following recent price comparison is an example of how I can shop among wholesalers in order to find the best price on four kinds of Land O'Lakes brand cheese.

ALL LAND O'LAKES

	Wholesaler #1	Wholesaler #2	Wholesaler #3
Yellow American Cheese	$1.77	$1.70	$1.67
White American Cheese	1.79	1.70	1.67
Hot Pepper Cheese	1.94	1.75	1.67
Onion Cheese	1.99	1.75	1.67

As you can see, some price differences are as low as three cents, or 1.7 percent, but the onion cheese shows a spread of 32 cents fully a 19 percent difference. I'm glad I have the freedom to decide which wholesaler I'm going to buy from, and I think you would be too if you were my customer.

I also have a recent price example involving Coca-Cola. My Coke distributor in Lawrence County sells me the two liter size bottle for $1.49 and I sell it at cost. My competitors in adjoining Beaver County are selling the same two-liter Coke for just 99 cents - 50 percent less! The Beaver County Coke distributor charges only 85 cents and the Coke distributor serving Lawrence County charges $1.49. These prices will change, but whenever and by however much they change, I want the freedom to deal with whichever wholesaler I chose. Thank goodness I still can for Land O' Lakes cheese and other products.

Whatever arguments the beer wholesalers are serving up cannot get around the fact that other wholesalers don't have the deck stacked in their favor, and as a retailer I can buy at lower prices because they have to be competitive in order to stay in business. Exclusive territories reduce competition. Reduced competition raises prices.

Please don't change the antitrust laws for the beer industry. It is inevitable that if the beer bill passes others will be encouraged to plead for the same protection. This will erode the retailer's ability to shop at the wholesale level for good prices and good service.

Thank you.

Mr. SPOA. Thank you, and I appreciate the opportunity to be here today. I own and operate Spoa's Fine Foods, a grocery store in Ellwood City, PA.

In Pennsylvania, State law prohibits grocery stores from selling beer. Nevertheless, I oppose S. 412 because I do not want to see the precedent of the beer bill antitrust exemption encourage the wholesalers of other products to seek similar protection.

The following recent price comparison is an example of how I can shop among wholesalers in order to find the best price on four kinds of Land O'Lakes brand cheese: Yellow American cheese, wholesaler 1, $1.77, wholesaler 2, $1.70, wholesaler 3, $1.67; White American cheese, $1.79 for wholesaler 1, $1.70 for wholesaler 2, and $1.67 for wholesaler 3; Hot Pepper cheese, $1.94, wholesaler 1, $1.75, wholesaler 2, $1.67, wholesaler 3; and onion cheese for wholesaler 1, $1.99; for wholesaler 2, $1.75, for wholesaler 3, $1.67.

As you can see, some price differences are as low as 3 cents, or 1.7 percent, but the onion cheese shows a spread of 32 cents, which is fully a 19 percent difference. I am glad I have the freedom to decide which wholesaler I am going to buy from, and i think that you would be too if you were my customer.

I also have a recent price example involving Coca-Cola. My Coke distributor in Lawrence County sells me the two-liter size bottle for $1.49 and I sell it at cost. My competitors in adjoining Beaver County are selling the same two-liter Coke for 99 cents, fully 50 percent less. Their Beaver Coke distributor charges 85 cents and the Coke distributor serving Lawrence County charges $1.49. These prices will change, but whenever and by however much they change, I want the freedom to deal with whichever wholesaler I choose.

Several weeks from now, I will be opening a second store in Beaver County. So I will have two stores, each in a different county, each with different prices because of the territory system that is now in effect. My customers in the one store will not be able to purchase Coke at the same competitive price as they will in my other store. Because of the present system and the restrictive territories, I could not even purchase the Coke at the lower price and transport it across the county line into my other store. Thank goodness I can still get the Land O 'Lakes cheese and other products on a competitive basis.

Whatever arguments the beer wholesalers are serving up cannot get around the fact that other wholesalers do not have the deck stacked in their favor. As a retailer, I can buy at lower prices because they have to be competitive in order to stay in business.

Exclusive territories reduce competition and reduced competition raises prices. The argument as to the need for this type of legislation because of capital investment is ignoring the fact that a retailer in an average-sized supermarket today has over $1 million invested in equipment alone.

The claim that exclusive territories enables a beer wholesaler to be more responsible to his community, to me, is also a very hollow claim.

Senator DECONCINI. Thank you.

Mr. SPOA. We as retailers are also very responsive to our communities, and we do that on our own.

Senator DECONCINI. Thank you, Mr. Spoa.

The Senator from Pennsylvania.

Senator SPECTER. Mr. Spoa, it is nice to see a Pennsylvanian on the panel today. The question that I have for you is: What is the status, if you know, of the effort in the Pennsylvania State Legislature to provide at the State level the objective that we are considering here today?

Mr. SPOA. Well, in Pennsylvania, we have no beer sales in grocery stores.

Senator SPECTER. But there has been an effort made, as I understand it, in the Pennsylvania General Assembly to have exclusive territories for beer distributors.

Mr. SPOA. If it was legislation that did not deal with the retailers, I really am not aware of it.

Senator SPECTER. You do not know where that stands now?

Mr. SPOA. No, I do not.

Senator SPECTER. Well, I understand that an effort was made. Does anybody else on the panel know what has happened in Pennsylvania on that proposal?

Mr. SULLIVAN. Senator, in Pennsylvania, exclusive territories are required already. They are one of the 26 States that require exclusive territories.

Senator SPECTER. So if this legislation were enacted nationally, it would not affect Pennsylvania?

Mr. SULLIVAN. It would not change that law.

Senator SPECTER. It would not change it. Pennsylvania already has the law.

Mr. SULLIVAN. It would change their antitrust status, but it would not change the exclusive territories.

Senator SPECTER. Thank you very much.

Thank you very much, Senator DeConcini.

Senator DECONCINI. Thank you, gentlemen. I do have some questions which I will submit to one of you I believe Chairman Thurmond also has questions which will be submitted.

[The questions and answers follow:]

Food Marketing Institute's Responses To Written Questions
Of Senator DeConcini Following The May 14, 1985 Hearing
On The Malt Beverage Interbrand Competition Act

Q: In his testimony, Marion Carnell said that he enjoys territorial franchise protection for his two Piggly Wiggly stores in South Carolina. Are territorial agreements between grocery parent companies and their wholly-owned or franchised retail locations common in the grocery industry? If they are, how would the Food Marketing Institute describe the effects of such vertical, non-price restrictions on competition in the grocery trade?

A: We are not aware of any retail grocers who have the protection of exclusive territories, including Mr. Carnell. Some grocers such as Mr. Carnell have "location clauses" in their agreements with their wholesaler suppliers. This means that the particular supplier agrees not to place another corporately owned or franchised retailer within a certain distance of the first grocer. Grocers are not required to turn away customers who do not live in their "territory," beer wholesalers are.

This is a far cry from the airtight exclusive distribution territories beer wholesalers seek. These exclusive territories are generally acknowledged to be the most restrictive and anticompetitive type of vertical restraint.

Q: A number of historical and empericle factors make the marketing of beer, an alcoholic beverage, different from the sugar, canned corn and cheeses mentioned in the FMI panel testimony. Should beer be handled and marketed in the same manner as other supermarket commodities? If so, why? If not, how then would you suggest that be handled?

A: Indeed, the marketing of beer is different. The highly regulated nature of the alcoholic beverage industry makes it less competitive than the "sugar, canned corn and cheeses" mentioned in FMI's testimony. Thus beer wholesalers are already substantialy protected from competition through state laws such as those that assure the three-tier system of distribution. They are seeking this present legislation to insulate themselves even further from the pressures of the marketplace.

There are social reasons why beer is not be distributed in the same manner as other products in the supermarkets, but no economic or competitive reasons. If beer distributors need exclusive territories to do their job then logically and equitably distributors of the 15,000 other items in the typical grocery store can as effectively argue they need them too. If so, what happens to competition?

FMI is not suggesting any change in the way beer is sold. That is why we oppose the beer bill. Retailers accept the status quo. It is the proponents of the beer bill who want to change the status quo by creating a new, different antitrust standard for judging exclusive territories in the beer industry.

Q: Testimony was received from the FMI panel that there were variances in the retail price of beer in different jurisdictions. Isn't it true that factors that could influence this price variance might be transportation costs, tax levels, size market, labor costs, and other similar factors unrelated to territorial restrictions on beer wholesalers?

A: There are, indeed, many factors that influence the price of beer as well as the price of all other commodities. This is what makes for opportunities in a free market system. The point is, however, the free market, not territorial barriers should be left to decide if one supplier gets the business instead of another. That is why the availability of competing suppliers enables the grocer, as the purchasing agent for the consumer, to seek the best price for his or her customers.

Senator DECONCINI. The next panel consists of Marion Carnell of South Carolina; James Holmes, Vermont Retail Grocers Association; and Paul Klett of Arizona.

Gentlemen, would you please come forward. Your full statements will appear in the record; however, due to our time restraints, we must limit your testimony here to a summary of your position. We will proceed as we did with the past panel.

Mr. Carnell.

STATEMENT OF A PANEL CONSISTING OF MARION CARNELL, RETAIL GROCER, WARE SHOALS, SC; JAMES HOLMES, EXECUTIVE VICE PRESIDENT, VERMONT RETAIL GROCERS ASSOCIATION, RUTLAND, VT; AND PAUL KLETT, MESA, AZ

Mr. CARNELL. Thank you, Mr. Chairman. I would like to first say that I appreciate the opportunity to appear before you today concerning the proposed Malt Beverage Interbrand Competition Act, or Senate bill No. 412.

I am Marion Carnell, in my 12th term as a member of the South Carolina House of Representatives, serving Abbeville, Greenwood, and Laurens Counties. In that capacity, I serve as vice chairman of the Ways and Means Committee of the South Carolina House.

I am also a co-owner of two Piggly Wiggly stores in Greenwood County, one in the town of Ninety Six and the other in Ware Shoals. I have been in the grocery trade since 1950. Mr. Chairman, after 23 years in the legislature and 35 years in the grocery business, I believe that I have the experience to back me up when I say that the Malt Beverage Interbrand Competition Act is a good piece of legislation.

It will reinforce South Carolina's own exclusive territorial law and it will maintain a high level of service and competition among South Carolina beer wholesalers. I testified in support of the South Carolina beer territory bill 2 years ago in South Carolina.

The hearings were held by Senator Dennis, who is chairman of the senate finance committee. The finance committee later voted overwhelmingly to report the bill out of that committee, and both the house and the senate enthusiastically endorsed this legislation.

South Carolina's legislators passed the bill mandating exclusive territories for beer distribution because we believed that exclusive territories would provide the most orderly and efficient system for marketing beer products, regulating those marketing practices, and collecting State excise taxes on the products sold.

The South Carolina Legislature had reason to believe the system would work because wholesalers had established areas of service without formally setting up territories through their franchise contracts with the breweries. In effect, the system had already been operating for years.

In the 2 years since the bill has passed, we have seen no reason to question our confidence in the system. South Carolina retailers seem to be happy with their relationships with the beer wholesalers throughout the State.

I have heard no complaints against beer wholesalers in my district since the bill went through, and as one of the principal supporters of the bill in South Carolina, I would expect to hear from anyone with a beef about beer. At this stage, I am confident that no news is good news.

As I said earlier, I supported the South Carolina bill because I felt it would enhance State control of alcoholic beverages. This is how I looked at the issue as a legislator. As a grocer, I embraced the territory bill because I think it is good for business.

I am not alone in that support. I understand that my good friend, Heyward Shealy, president of the South Carolina Retail Grocers' Association, has written you a letter supporting Senate bill No. 412. Heyward Shealy owns and operates Chapin Red and White Grocery Store in Chapin, SC, and he had intended to appear before the committee to testify on behalf of the bill, but back surgery has restricted his activities for a while.

Grocers should feel comfortable with this legislation because the beer bill is identical to the soft drink bill passed in 1980. That bill allowed soft drink distributors to have exclusive territories for the distribution of their products.

Since that legislation was passed, competition among South Carolina's soft drink distributors has heated up. Those who distribute the "real thing" are struggling to compete against the drink of "a new generation." This is the kind of healthy competition that the soft drink legislation promised to strengthen.

I would like to leave from my prepared remarks because this has been mentioned. In my particular stores, prior to 1 year ago the Coca-Cola bottler there in my district decided he did not want to promote anymore; he would only have one price. So he quit giving us promotions to run a special and have special displays.

Pepsi Cola and Royal Crown did continue to do this and they gained practically all of the shelf space and all the display cases. Coca-Cola took a back seat, and 1 year ago they decided to start back promoting the same as Pepsi and RC Cola, and now we are enjoying the competition between them after the 1980 law was passed for the soft drink bottlers.

No retailer in his right mind would want to have six Coca-Cola distributors coming into his store, crashing their trucks in his parking lot, and taking up his time trying to beat his competitors with penny-ante promotions. If I had to deal with that many people handling just one product, I would have little time to run the rest of my store.

Instead, I prefer to deal with one distributor for each brand. They give me competitive prices and promotions because if they do not, they will not sell as much of their particular brand of cola. But more——

Senator **DECONCINI**. Mr. Carnell, I am sorry. We are running out of time. The balance of your statement will be put in the record. We thank you for that statement.

[The prepared statement follows:]

TESTIMONY OF MARION CARNELL
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
MAY 14, 1985

Mr. Chairman, distinguished members of the Judiciary Committee, it is an honor for me to testify before you today concerning the proposed Malt Beverage Interbrand Competition Act, or Senate Bill #412.

I am Marion Carnell, in my twelfth term as a Member of the South Carolina House of Representatives serving Abbeville, Greenwood and Laurens counties. In that capacity, I serve as vice chairman of the Ways and Means Committee of the South Carolina House.

I am also a co-owner of two Piggly Wiggly food stores in Greenwood County -- one in the town of Ninety Six and the other in Ware Shoals. I have been in the grocery trade since 1950.

Mr. Chairman, after 23 years in the legislature and 35 years in the grocery business, I believe that I have the experience to back me up when I say that the Malt Beverage Interbrand Competition Act is a good piece of legislation. It will reinforce South Carolina's own exclusive territorial law and it will maintain a high level of service and competition among South Carolina beer wholesalers.

I testified in support of the South Carolina beer territory bill two years ago. The hearings were held by Sen. Rembert Dennis, who is chairman of the Senate Finance Committee. The Finance Committee later voted overwhelmingly to report the bill out, and both the House and the Senate enthusiastically endorsed the legislation.

South Carolina's legislators passed the bill mandating exclusive territories for beer distribution because we believed that exclusive territories would provide the most orderly and efficient system for marketing beer products, regulating those marketing practices, and collecting state excise taxes on the products sold.

The South Carolina legislature had reason to believe the system would work because wholesalers had established areas of service without formally setting up territories through their franchise contracts with the breweries. In effect the system had already been operating for years.

In the two years since the bill was passed, we have seen no reason to question our confidence in the system. South Carolina retailers seem to be happy with their relationships with the beer wholesalers throughout the state. I have heard no complaints against beer wholesalers in my district since the bill went through, and as one of the principal supporters of the bill in South Carolina, I would expect to hear from anyone with a beef about beer. At this stage, I am confident that no news is good news.

As I said earlier, I supported the South Carolina bill because I felt it would enhance state control of alcoholic beverages. That is how I looked at the issue as a legislator. As a grocer, I embraced the territory bill because I thought it was good for business.

I am not alone in that support. Mr. Chairman, I understand that my good friend Heyward Shealy, president of the South Carolina Retail Grocers' Association, has written you a letter supporting Senate Bill #412. Heyward Shealy owns and operates Chapin Red and White grocery store in Chapin, South Carolina. He had intended to appear before this Committee to testify on behalf of the bill, but back surgery has restricted his activities for a while. Mr. Chairman, I am sure you join me in wishing him a swift recovery.

Grocers should feel comfortable with this legislation because the beer bill is identical to the soft drink bill passed in 1980. That bill allowed soft drink distributors to have exclusive territories for the distribution of their products. Since that legislation was passed, competition among South Carolina's soft drink distributors has heated up. Those who distribute "the real thing" are struggling to compete against the drink of "a new generation." That is the kind of healthy competition that the soft drink legislation promised to strengthen.

No retailer in his right mind wants to have 6 Coca-Cola distributors coming into his store, crashing their trucks in his parking lot, and taking up his time trying to beat his competitors with penny-ante promotions. If I had to deal with that many people handling just one product, I would have little time to run the rest of my store.

Instead, I prefer to deal with one distributor for each brand. They give me competitive prices and promotions, because if they don't they won't sell as much of their particular brand of cola. But, more important from the retailer's point of view, dealing with one Pepsi distributor enhances my management efficiency. I can schedule the time and day of my Pepsi deliveries. That way, my soft drink distributors don't interfere with my fruit and vegetable deliveries, or any of the thousands of products I carry in my Piggly Wiggly stores. The same principles apply to beer distribution -- one wholesaler per brand, per area means better service and greater efficiency.

Mr. Chairman, your committee has heard testimony from the Food Marketing Institute and other grocers who pledge their allegience to free and open competition. They say that they oppose beer territories because territories allegedly hinder strong competition. What they have not told this committee, however, is that grocers often have territorial rights of their own.

For example, when Mr. Joe Newton and his family awarded me two Piggly Wiggly franchises, they also gave me a degree of territorial protection: they assured me that they would not put another Piggly Wiggly store across the street from my stores. In fact, they assured me that there would be no other Piggly Wiggly stores in my market area.

That territorial protection frees me from competition with my trademarked peers and allows me to compete against the other chains and independent grocers in Greenwood County. I can see no reason why grocers should enjoy territorial protection themselves, but protest similar franchise arrangements in the beer industry.

Mr. Chairman, I support the Malt Beverage Interbrand Competition Act for all the reasons stated in my testimony. I believe the bill will reinforce the laws of the great State of South Carolina, by giving federal consent to the territorial system of beer distribution mandated by the elected representatives of the People of South Carolina. Those laws were made through the exercise of our 21st Amendment rights to control the importation and distribution of alcoholic beverages within the State. Those laws also were made because we, in the Legislature, truly believed that the territorial distribution system was in the best interest of South Carolina's consumers.

Mr. Chairman, I still believe in that system, and I urge you to act favorably on this important piece of legislation.

Thank you.

House of Representatives

State of South Carolina

Marion P. Carnell
District No. 14-Greenwood-Laurens-
Abbeville Counties
Box 119
Ware Shoals, S.C. 29692

Committees:
Interstate Cooperation, Chairman
Ways and Means, 2nd Vice Chairman

518-C Blatt Building
Columbia, S.C. 29211

Tel. (803) 758-2559
758-5641

May 27, 1985

The Honorable Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

It is an honor to respond to your questions regarding S 412, the Malt Beverage Interbrand Competition Act. I hope that these responses will contribute to a full and conclusive airing of the merits of this important legislative proposal.

Your first question regards the exclusive territorial law in South Carolina and the experience of prices and service in our state prior to and after the enactment of that legislation. Senator Thurmond, I am sure that you are aware that the South Carolina legislature overwhelmingly mandated exclusive territories for beer distributors in 1983. I was one of the principal sponsors of the South Carolina beer territory law.

As I mentioned in my testimony before your Committee, the South Carolina legislature endorsed the territorial distribution system because its members firmly believed that exclusive territories would provide the most orderly and efficient system for marketing beer products, regulating those marketing practices, and collecting state excise taxes on the products sold. Such an orderly and efficient system, Mr. Chairman, was deemed to be in the best interest of South Carolina's consumers.

Page 2
Senator Thurmond

The bill was enacted for other reasons than control of alcoholic beverage:

> The bill was enacted because the *de facto* system of beer territories in South Carolina had already proved capable of providing quality merchandise, full service and competitive prices to South Carolina's retailers. Passage of the bill had no effect on prices or service because the beer territory bill simply put into law the usual and customary system that has served South Carolina well for years. *De facto* territories became *de jure* territories. There was no reason for prices or services to change; and, to my knowledge, they have not changed in any way attributable to the law.

Regarding your second question concerning the need for S 412 and my projections as to how the bill would affect prices and services available to me and other retailers: I believe S 412 is needed to preserve the integrity of the South Carolina territory law and thereby to assure continued full service and competitive prices to all of South Carolina's retail sellers of beer.

Passage of S 412 will send a clear signal to the federal courts that States such as South Carolina are free to determine the malt beverage distribution system that best serves their respective citizenries. In South Carolina, we have chosen exclusive territories for beer wholesale distribution. That system, in our estimation, can be trusted to deliver not just beer but essential services and competitive prices as well.

I urge your support, Mr. Chairman, for the Malt Beverage Interbrand Competition Act.

Sincerely,

Marion Carnell

Marion P. Carnell

MPC/cj

P. S. I had hoped to see you during the hearing on May 14, 1985, and hope to see you soon.

Senator DECONCINI. I want to thank you for coming here. I understand you had a difficult time.

Mr. CARNELL. Yes.

Senator DECONCINI. You thought once or twice about not coming because of some unfortunate——

Mr. CARNELL. Mr. Chairman, if you would permit me to have 15 seconds, I would——

Senator DECONCINI. Sure, go ahead.

Mr. CARNELL. I would like to say that under my Piggly Wiggly franchise, I am afforded an exclusive area. I operate in two small communities of about 2,000 people. The Piggly Wiggly wholesale company there says that they will never put another Piggly Wiggly store in my community, so I do have protected rights, so to speak. So I think if it is good for me, then it would be good for the beer industry.

Senator DECONCINI. We thank you, Mr. Carnell, for coming forward, particularly under the circumstances.

Mr. Holmes, we will put your full statement in the record. Due to time and fairness I must ask you to summarize your position.

[The prepared statement follows:]

TESTIMONY OF JAMES E. HOLMES

EXECUTIVE VICE PRESIDENT, VERMONT RETAIL GROCERS' ASSOCIATION

Good morning, Mr. Chairman, members of the Judiciary Committee. I am James E. Holmes, executive vice president of the Vermont Retail Grocers' Association. I thank you for allowing me to testify today in strong support of the Malt Beverage Interbrand Competition Act.

The 800-member Vermont Retail Grocers' Association ardently endorses the proposed Malt Beverage Interbrand Competition Act and urges this committee to mark-up the bill and allow it to come to a vote on the Floor. At that time, we hope the wisdom of the Senate will ensure the bill's passage.

The Interbrand bill would clarify the U.S. antitrust laws to confirm the legality of exclusive territorial agreements between brewers and beer wholesalers. These have been standard practice in the beer industry for years and have benefited our retailers in terms of low prices and quality products.

Under the present system, beer wholesalers are required by the brewers they represent to sell to every licensed retail account in the territory that wishes to purchase their brands. This is critical to the Vermont Retail Grocers' Association because the vast majority of our members are small, independent grocers. In fact, the Association represents 150 independent supermarkets and the rest of our members are traditional Mom and Pop grocery stores.

Many of our locations are in tiny, out-of-the-way towns scattered across the Vermont countryside. If beer wholesalers did not have specified territories and contractual requirements to service all potential retail customers, they might be tempted to service only the biggest and most profitable accounts. That would leave our smaller stores out in the cold. Moreover, it would put a severe chill on competition if the "giant" chain stores in Vermont, such as Grand Union, A & P, Price Chopper and P & C were to monopolize and control the Vermont beer retail business.

Mr. Chairman, the Vermont legislature recognized the potential danger of retail monopolization of the beer trade when it enacted an exclusive territorial law to regulate the three-tier distribution system for beer some 9 years ago. That law has worked extremely well in our state. Indeed, the relationship between grocers and beer wholesalers in Vermont could serve as a model of cooperation and mutual respect for the rest of the nation.

There is no question in my mind that service is far superior under exclusive territories. Wholesalers visit even the most remote outlets every 2 or 3 days. In the cities, wholesalers often service their customers every day. Wholesalers provide as much service to their customers as is allowed under the very strict watch of the State Liquor Board. Our wholesalers help us merchandise, break in new products, and keep up with what is happening in the marketplace. They recently offered to supply their on-sale customers with taps, but their request for approval was denied by the Liquor Board.

I just cannot see why other grocery organizations that profess to represent small grocers would want to get rid of territories when it will put the bulk of the beer wholesalers out of business and concentrate the wholesale and retail markets for beer in the hands of a small group of wholesalers and huge grocery chains. Exclusive territories are essential to competition, service and fair prices. Without them, small grocers in Vermont and across the country would be lucky to get 25 percent of the service they now enjoy. Some would get no service at all.

Beer wholesalers are very important to Vermont's retail grocers. That is why we support Senate Bill #412, a bill that will help maintain the present level of good clean competition in beer distribution and, ultimately, in beer retail sales in our state.

Thank you.

VERMONT RETAIL GROCERS' ASSOCIATION, INC.
27 WEST STREET, RUTLAND, VERMONT 05701

Allen Mehuron, *President*
Waitsfield, VT
802/496-3700

Vincent Caggige, *Treasurer*
Rutland, VT
802/773-9898

James F. Holmes, *Executive Vice President*
Office: 27 West Street
Rutland, 802/775-5460

May 29, 1985

The Honorable Strom Thurmond
Chairman
Committee on Judiciary
United States Senate
Wasington, D.C. 20510

Dear Senator Thurmond:

This letter is in response to your inquiries regarding the Malt Beverage Interbrand Competition Act (S. 412) and its possible affects on prices and services in Vermont. To ensure that the record is complete, I will repeat the questions posed in your letter and respond to them accordingly.

1. "If you reside in one of those states with laws regarding exclusive territories for beer distribution, please describe the experience of prices and service before and after enactment of those laws."

Mr. Chairman, I do reside in a state that mandates exclusive territories for beer distributors. The Vermont legislature enacted an exclusive territorial law to regulate the three-tier distribution system for beer some nine years ago. Nine years is a long time in any industry. Prices for almost all retail commodities were lower in 1976 than they are today. Inflation has taken its toll. Yet, some commodities have fared better than others.

Beer prices have consistently performed well when compared to the other commodities monitored on the Consumer Price Index. Since 1967 (when the Bureau of Labor Statistics began indexing consumer prices) the average price of the 400 products surveyed for the CPI rose 211 percent. Over the same period, the consumer price of beer rose only 130 percent -- 81 percent behind the overall average.

Mr. Chairman, I believe the figures from the CPI are indicative of the price performance of beer in Vermont before and after the enactment of the Vermont beer territories statute. Beer prices have been of little concern to Vermont grocers because beer prices have consistently been among the most competitive relative to the thousands of other goods we carry.

Your question is very well taken in that it addresses more than just prices. For Vermont's retail grocery trade, service from beer wholesalers is as important as, if not more important than, the prices they charge.

Mr. Chairman, I cannot overemphasize the point that service is superior under exclusive territories. As I said in my testimony, the majority of the retail members of the Vermont Retail Grocers' Association are small, independent, and out-of-the-way grocery stores. If beer wholesalers did not have specified territories and contractual requirements to service all potential retail customers, they might be tempted to service only the biggest and most profitable accounts. That would leave the smaller stores out in the cold

That is why the Vermont legislature enacted a territorial bill nearly a decade ago. The legislature saw the potential for retail monopolization of the beer trade by a few large chains. By assuring Vermont's beer wholesalers of their territorial rights, the legislature also assured Vermont's independent retailers of continued, reliable service.

2. "Why do you believe that this bill is needed, and how do you think it would affect prices and services available to you?"

I believe the Malt Beverage Interbrand Competition Act is needed to clarify the U. S. antitrust laws to confirm the legality of the same exclusive territorial agreements between brewers and wholesalers that have worked so well for the retail grocers of Vermont. Without such a clarification I fear that the large grocery store interests might try to overturn our territorial system on antitrust grounds. That, in turn, would jeopardize a system that has been both competitive and effective in providing service to our retail members.

I do not think that S.412 will have any effect whatsoever on prices and services. The bill would help to preserve th legal and competitive status quo in Vermont. That status quo--the relationship between grocers and beer wholesalers in Vermont-- could serve as a model of cooperation and mutual respect for the rest of the nation.

Sincerely,

James E. Holmes

James E. Holmes
Executive Vice President

Mr. Holmes. Thank you, Mr. Chairman.

Senator DeConcini. Can you put the microphone in front of you. Thank you, sir.

Mr. Holmes. Yes; thank you.

In general, I represent 800 grocery stores in the State of Vermont, and we ardently endorse the Malt Beverage Interbrand Competition Act. The main reason is that we have enjoyed some great practices and standards by our beer wholesalers.

In our particular State, we are a small State. We are getting excellent service. There are many tiny communities that would not receive this service, I believe, if this act is not endorsed.

There are some rural areas, if you have ever been to Vermont, that I assure you will not get service. Presently, they are getting anywhere from 2 to 3 days' service during every single week of the year.

Furthermore, our practices, since the 1980 act, of the soft drink industry have increased the competition amongst the Pepsi's, the Coke's, the Seven Up's, and our stores are passing on greater promotions than ever before.

I am in strong support of this legislation and our State association endorses it very strongly.

Senator DeConcini. Thank you, Mr. Holmes. Is it fair to say that you think the benefits of this type of legislation—well, first of all, does the State of Vermont have exclusive territories?

Mr. Holmes. Yes.

Senator DeConcini. And that has benefited at least the 800 stores that you——

Mr. Holmes. Yes, greatly, sir.

Senator DeConcini. And you see that this legislation would not have any adverse effects and would, in fact, be beneficial to your members?

Mr. Holmes. I think it would have no adverse effects, and I think the beneficial effect would be tremendous to our types of retailers.

Senator DeConcini. Thank you. We appreciate your being here today; it is very important to us.

Mr. Holmes. It has been my pleasure.

Senator DeConcini. Mr. Klett, thank you for being with us. Your full statement will be printed in the record as if read. Please summarize it or give us your opinion.

[The prepared statement follows:]

TESTIMONY OF PAUL KLETT
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
May 14, 1985

Mr. Chairman, distinguished Senators, it is a great honor to be invited to appear before your prestigious committee today to testify on a subject that I have dealt with for the better part of a lifetime -- the distribution and marketing of alcoholic beverages.

Mr. Chairman, I'm here to tell you that I support territories for beer wholesalers. I support the Malt Beverage Interbrand Competition Act.

My name is Paul Klett. I am from Mesa, Arizona, by way of Saudi Arabia and New York. I started selling beer while in the delicatessen and grocery business in New York during the 1930s. From 1943 to 1946, I was a commissary officer in the Navy, where I dealt mainly with spirits. After that I spent 16 years in Saudi Arabia, where I was licensed by the King to handle the importation and distribution of all spirits for ARAMCO. I returned to the United States in 1962 and bought a retail liquor store in Mesa, Arizona. I ran that store for 22 years, until my retirement in 1984.

Over the years I have held numerous leadership positions in the alcohol industry. I have served on the Board of Directors of the National Liquor Store Association since 1963. Even though I have officially retired from the business, I still serve on that Board. In fact, I was first vice president for the western region for two years.

I also served as president of the Arizona Licensed Beverage Association from 1972 to 1976. The Arizona Licensed Beverage Association has 1,400 members in all different categories, including on-sale locations such as restaurants, bars, and hotels, and off-sale locations such as liquor stores, convenience markets and other retail outlets.

Mr. Chairman, after 55 years in the business, it is safe to say that I have had extensive dealings with beer wholesalers. I understand their business, and they understand mine. It is that mutual understanding that has led to very good relations between the beer distributors and the licensed beverage retailers in Arizona.

In Arizona, beer is distributed and sold according to the standard, three-tier system. That means the brewer manufactures the malt beverage products. The brewer then sells those lines to its designated wholesalers serving different areas of the state. The individual wholesaler in turn manages the distribution of his malt beverage products to the retailers in his area.

The wholesaler usually sends a salesman to take an order with the retailer in advance of the actual delivery. That is called the "pre-sell." He then dispatches his trucks to the retail location at a time specified by the retailer. The driver delivers the product, rotates the stock, cleans the display cases, and replaces any old or damaged goods. In the case of taverns or restaurants that have beer on tap, the wholesaler usually has someone on staff whose primary responsibility is to do nothing but clean and maintain the taps, coils and lines of the wholesaler's on-sale customers.

From my experience, the three-tier system has always been the best way to deal with beer distributors. And the best way to set up a three-tier system is to have different territories for beer wholesalers who carry the same brands. Competition is better when you deal with only one wholesaler for each brand because when you have a bunch of guys selling the same brand it opens up the possibility of under-the-table deals and cutthroat competition that is very unhealthy for the market. This kind of deal-making usually involves big chain stores that want to squeeze the little guy out of the market.

That is the kind of unhealthy competition that Arizona's licensed beverage retailers fear. It is the kind of unhealthy competition that destroys the smaller independent retail businesses. And it is the kind of unhealthy competition that leads to a free-for-all in the spirits market. And that, Mr. Chairman, is not in the best interest of the public.

I am proud that the two Senators from my adopted state of Arizona have joined in a bipartisan sponsorship of the Malt Beverage Interbrand Competition Act. I think it shows that they understand the beer distribution business, and the concerns of the retailers who sell malt beverage products.

We have terrific beer wholesalers in Arizona, and I expect there are terrific beer wholesalers all across this country. Almost all of those wholesalers have some sort of territorial arrangement with their respective brewers. That has not diminished competition in the beer business one bit. If anything, the territorial distribution system has kept wholesalers on their toes.

I have never asked such distinguished members of the Senate to do anything before. But I am asking you to do something now. I am asking you to preserve the wholesale beer distribution system that has been around about as long as I have. I urge you to support Senator Goldwater and DeConcini, and all your colleagues who favor this bill.

In short, Mr. Chairman, I urge you to support and act on the Malt Beverage Interbrand Competition Act, and I thank you for allowing me to come here today and share my thoughts with your committee.

FRANK GRAHAM, President
[illegible]

LOUIS POULOS, Treasurer
[illegible]

JIM SILVIUS, Executive Director

KEN HOFFMAN, Exec. Vice Pres.
[illegible]

HERMAN JACOBS, Exec. Vice Pres.
[illegible]

ARIZONA LICENSED BEVERAGE ASSOCIATION, INC.

OFFICE 2110 NORTH 15TH AVENUE SUITE 11 • PHOENIX, ARIZONA 85007 • Telephone (602) 258-8951

AFFILIATED WITH NATIONAL LICENSED BEVERAGE ASSOCIATION • NATIONAL LIQUOR STORES ASSOCIATION • DISTILLED SPIRITS COUNCIL OF THE U.S.

May 29, 1985

The Honorable Strom Thurmond
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Thurmond:

Thank you for inviting me to address your questions about the Malt Beverage Interbrand Competition Act.

To answer your first question, I do not live in a state with an exclusive territories law. Arizona law does not require exclusive territories for beer wholesalers, but the brewers have established territories in their franchise contracts with their designated wholesalers in Arizona. In other words, beer territories are a fact of life in Arizona even though they are not a fact of law.

I can't really answer the second part of your question about my experience with prices and service before and after enactment of a territories law. As I said, we don't have a law. But I can tell you about my experience with prices and service from my beer wholesalers. I've been in the retail liquor business in Arizona for 22 years, and I think that qualifies me to speak on my "experience".

I can understand your concern about prices and services in states where exclusive territories are used, especially after hearing the testimony of Lloyd Constatine, the New York Assistant Attorney General. He said, "A 36.7 percent price rise is an indication that consumers have been severely harmed" by granting exclusive rights to beer distributors.

The price increase was said to have occurred over the past three years. During this time span a "bottle bill" was passed causing a minimum of $1.20 deposit on each case of 24 bottles or cans. There was also a New York State and City of New York tax increase on beer.

When you consider the "bottle bill deposits" and the tax increases you will find that a substantial amount of the beer price increases over the past three years can be attributed to circumstances beyond the control of the beer wholesalers.

A check in Arizona revealed: Budweiser beer sold for $8.10 per case in 1982, $8.76 per case in 1983, and $9.32 per case in 1984. During this period, there was an 18 cents per case state tax increase. The total price increase percentage was less than 15%.

Budweiser, Coors, Miller, Schlitz and Stroh's beer distributors in Arizona have had beer increases considerably below the rate of inflation which I am sure you will agree is commendable.

From my experience, the three-tier system has always been the best way to regulate beer distribution. And the best way to set up a three-tier system is to have different territories for the beer wholesalers who carry the same brand. That helps both competition and service.

For 22 years, I received regular and helpful service from the beer wholesalers who served my liquor store in Mesa, Arizona. I could count on those guys to be there when I needed them. They delivered the product, cleaned the cases, rotated the stock, set up promotions and helped me to introduce new products for my customers. Now for my money, that is service that I could use, and I got it week-in, week-out from my Bud, Miller, Coors, Schlitz and Stroh's distributors and on down the line. If anything, the competition between the wholesalers in my territory made them more enthusiastic about serving my store and others like it.

To answer your second question, I think the Malt Beverage Interbrand Competition Act is needed to keep the transshippers and the chain stores from squeezing the little guy out of the retail beer trade. The beer territory bill will help to preserve the system that I depended on as a retailer.

S. 412 would have no effect on prices or service. It would not change the laws in Arizona. It would not change the practice in Arizona. Instead, the law would allow beer wholesalers to continue in the current territorial system so long as there is "substantial and effective competition" among brands of beer in the different territories. That added security will allow Arizona's beer wholesalers to plan ahead, to cut costs, and to meet the demands for their products with efficient service and low prices.

I think that is the best way to deal with beer and beer distributors. I hope you will agree and support the Malt Beverage Interbrand Competition Act.

Sincerely,

Paul Klett

PAUL KLETT
Director - ALBA

QUESTIONS FOR RETAILERS REPRESENTING NATIONAL BEER WHOLESALERS ASSOCIATION

1. If you reside in one of those states with laws regarding exclusive territories for beer distribution, please describe the experience of prices and service before and after enactment of those laws.

2. Why do you believe that this bill is needed, and how do you think it would affect prices and services available to you?

Mr. KLETT. Mr. Chairman, after 55 years in the business, it is safe to say that I have had extensive dealings with beer wholesalers. I understand their business and they understand mine. It is that mutual understanding that has led to very good relations between the beer distributors and the licensed beverage retailers in Arizona.

In Arizona, beer is distributed and sold according to a standard three-tier system. That means the brewer manufactures the malt beverage products; the brewer then sells those lines to the designated wholesalers serving different areas of the State. The individual wholesaler, in turn, manages the distribution of his malt beverage products to the retailers in his area.

A wholesaler usually sends a salesman to take the order with the retailer in advance of actual delivery; that is called presell. He then dispatches his trucks to the retail location at a time specified by the retailer. The driver delivers the product, rotates the stock, cleans the display cases, and replaces the old and damaged goods.

In the case of taverns or restaurants that have beer on tap, the wholesaler usually has someone on the staff whose primary responsibility is to do nothing but clean and maintain the taps, coil, and lines of the wholesaler's on-sale customers.

I have never asked such distinguished Members of the Senate to do anything before, but I am asking you to do something now. I am asking you to preserve the wholesale beer distribution system that has been around about as long as I have.

I urge you to support Senator DeConcini and Senator Goldwater and all your colleagues who favor this bill. In short, Mr. Chairman, I urge you to support and act on the Malt Beverage Interbrand Competition Act. And I thank you for allowing me here today to share my thoughts with you.

Senator DECONCINI. Thank you, Mr. Klett, very much. It is fair to say from your testimony that you think competition is better when you are dealing with a wholesaler that has territorial areas?

Mr. KLETT. Yes, it certainly is.

Senator DECONCINI. Could you comment on the relationship between beer wholesalers and licensed beverage retailers in Arizona?

Mr. KLETT. The relationship between the wholesalers and the Arizona retailers is very compatible, a very fine relationship, and competition is very keen.

Senator DECONCINI. Very keen because of the interbrands?

Mr. KLETT. Yes, sir.

Senator DECONCINI. Thank you, gentlemen. We appreciate immensely your being with us today and your testimony, and particularly you, Mr. Carnell. I greatly appreciate your being here. We regret the inconvenience and problems that you have faced from the standpoint of public relations or whatever it was in your State. We admire your willingness to come forward and put your neck out on the line for what you believe in.

Mr. **Carnell**. Thank you, Senator.

Senator **DeConcini**. Our last witness is Stephen Brobeck, executive director, Consumer Federation of America. Your full statement will appear in the record, Mr. Brobeck. We welcome you here today. We appreciate your time and the Consumer Federation's time on these important issues.

The record will have your full statement, so if you would please summarize it.

[The prepared statement follows:]

Statement of
Stephen Brobeck
Executive Director
Consumer Federation of America

Mr. Chairman and Members of the Judiciary Committee, I am Stephen Brobeck, Executive Director of Consumer Federation of America (CFA).* CFA is grateful for this opportunity to testify on S. 412, the Malt Beverage Interbrand Competition Act. We oppose this legislation as we opposed similar legislation in the last two Congresses. In our view, S. 412, if enacted, would raise prices, reduce competition, and undermine the equal application of antitrust law which helps form the foundation of free and effective markets in this country.

CFA's analysis of S. 412 will proceed in three parts: I. Our general position on antitrust exemptions; II. the likely impact of S. 412 on industry competition and consumer prices; and III. an evaluuation of the policy arguments offered in support of S. 412.

I. Antitrust Exemptions

CFA finds itself in complete agreement with the January 1979 report of the President's National Commission for the Review of Antitrust Law and Procedures, which concluded that antitrust exemptions are appropriate "only where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose."

The burden of those seeking legislative antitrust exemptions must be particularly heavy. The political momentum behind such legislative efforts is likely to be produced in markets characterized by intense and innovative competition. This is the kind of competition favored by everyone, except the competitors themselves.

There is another political reality of enormous consequence that Congress must recall when it deliberates over antitrust exemptions. Politically speaking, one antitrust exemption begets another.

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* Consumer Federation of America is a coalition of over 200 national, state and local pro-consumer organizations. The collective membership of these groups is more than 30 million people.

In recent sessions of Congress, beer wholesalers have joined doctors, lawyers, shipping companies, and office equipment dealers in the attempt to emulate the soda bottlers' successful 1980 legislative effort in securing limited antitrust immunity.

This "me-too" philosophy lies at the heart of the beer industry's campaign to enact S. 412. According to the first line of memorandum provided to CFA by the counsel to the National Beer Wholesalers Association: "The proposed Malt Beverage Interbrand Competition Act would extend to the beer industry the same provisions...theCongress provided the soft drink industry in 1980." As weak as this argument may be substantively, it is powerful politically. And if it is successful for beer, which product or sector of the economy will step forward, this time with not one, but two precedents?

It is up to the Congress--and particularly the Judiciary Committee -- to declare unmistakbly that there is no legislative "open-season" on the antitrust laws. If it does not, then antitrust law will come to depend as much on campaign contributions and legislative know-how as it does on enduring judicial and economic principles. Thus, CFA believes that every request for legislative relief from antitrust law must be subject to a thorough and skeptical inquiry, governed by a heavy presumption against the exemption. If this Committee agrees, then S. 412 should be enacted only if it addresses a truly pressing national problem.

II. Legal and Cost Implications of Exclusive Territorial Distribution Scheme Contemplated by S. 412

S. 412 would create antitrust immunity for a beer distribution system granting territorial monopolies to the distributors of particular brands. Yet similar territorial arrangements have already passed legal muster with the Supreme Court in the GTE Sylvania case; in fact, exclusive territories are present in today's beer market. Why seek by legislation what is already available by simple private contract?

The proponents of this bill offer several reasons -- which we will address in section III -- but antitrust experts have a persuasive response of their own. Territorial restrictions which reduce competition will not meet the standards laid down by the Supreme Court in GTE Sylvania. Thus, if the brewers and beer wholesalers forsee that their proposed system of distribution monopolies will raise prices and further concentrate the industry, then they must seek legislation -- because their arrangement would not survive antitrust challenges in the federal courts.

Former Assistant Attorney General for Antitrust William Baxter made exactly this point in 1983, calling the risks "uniquely high" that the beer industry "appears to be one in which the ... widespread use of exclusive territories may produce anticompetitive effects." It is critically important to remember that Mr. Baxter was a strong supporter of the GTE Sylvania decision and territorial restrictions. In testimony before this Committee two years ago, he concluded that "in many, if not most, industries, the structural characteristics of production and distribution significantly reduce the likelihood that exclusive territories will or can be used to generate anticompetitive results .... Unfortunately, none of the above mitigating factors is present in the malt beverage industry."

The risks of blanket territorial monopolies in beer distribution are illustrated by the experience of two states with such monopolies. In both New York and Indiana, exclusive distribution for beer has meant higher prices for consumers.

Indiana presents the most compelling case. The state's 1981 Alcoholic Beverage Study Committee found that the price of beer declined 20% with the advent of competition by distributors of the same brand. A 1982 Indianapolis Star survey reported a similar average price differential in comparing competitive distribution and exclusive territories. And the research of Dr. Bruce Jaffee, Professor of Business Economics and Public Policy at Indiana University, reached the same conclusion. More importantly, Professor Jaffee's work demonstrates the impact of imposing territorial distribution monopolies on an already concentrated beer industry:

> "Not only did local wholesalers not engage in any intrabrand competition until possibly 1977, there was also a remarkable absence of significant interbrand competition among these wholesalers. The common pricing scheme was to charge the same price for all popular beers, all premium beers, and all super premium beers, regardless of the brand within the category. Prices for all brands within a category were typically changed simultaneously...Thus, it appears that esclusive franchises reduced both intra- and interbrand price competition."

Less complete evidence from New York corroborates the Indiana findings. Government price surveys from New York City document beer price increases of 30% in the first ten months of 1983, just after the introduction of exclusive territories. Almost all this increase reflected exclusive territories, not a recently enacted "bottle bill," since soft drink prices increased only 4% in the same period.

The Indiana and New York data show that exclusive territorial arrangements can lead to higher prices by reducing both intrabrand and interbrand competition. Yet, the Indiana and New York examples do not lead inevitably to the conclusion that all exclusive territories harm competition. Instead, the experience of these states demonstrates quite simply that distribution monopolies must be examined case-by-case. That is precisely the analysis the GTE Sylvania now requires. It should not be disturbed by a new legislative scheme.

III. Critique of Beer Industry's Policy Arguments in Support of Legislative Territorial Distribution Monopolies

The proponents of S. 412 put forward three basic arguments in support of this legislation: 1. A legislative solution will eliminate the high litigation costs of applying GTE Sylvania case-by-case to exclusive territorial agreements. 2. Exclusive territories are necessary to assure the delivery of fresh beer. 3. Exclusive territories are necessary to prevent the damaging consequences of transshipping of beer by distributors from other territories.

1. Reducing Litigation Costs

Supporters of S. 412 argue that the many small distributors in the beer industry could ill afford the protracted GTE Sylvania litigation necessary to clarify the status of exclusive territorial agreements. They offer instead a broadscale elgislative immunity for distribution monopolies, provided that "substantial and effective competition with other malt beverage products exists." The language and concepts of this proviso, however, offer at least as much potential for litigation, if not more. "Substantial and effective competition" is an elastic phrase, subject to a variety of judicial constructions and applications. Even the subparts of that standard --"substantial," "effective," "other malt beverage products," and "defined geographic area" -- are ripe for legal interpretation and reinterpretation. These legal terms -- and the facts to which they will apply -- are every bit as complex as the GTE Sylvania analysis.

The supporters of this legislation face a familiar dilemma. They could have sought an overinclusive legislative remedy, for example, a blanket antitrust exemption for all exclusive territories. But that remedy would clearly put some anticompetitive arrangements beyond the reach of the law. It would also put the legislation beyond the limit of political feasibility.

The other option -- chosen by the drafter of S. 412 -- is to create a new legal standard to take the place of GTE Sylvania. This legislation adopts "substantial and effective competition with other malt beverage products in that defined geographic area." But, however permissive that test, it is nevertheless open to interpretation, and thus to litigation. As a consequence, the argument that S. 412 will eliminate or reduce litigation costs turns out to be a very weak one.

2. Assuring Delivery of Fresh Beer

S. 412's supporters also insist that exclusive territories are necessary to maintain the quality and freshness of beer. This argument is very difficult to understand. If consumers purchase stale beer from a retailer, they will either exchange it for a fresh six pack or begin buying their beer elsewhere. Either step sends a signal to the retailer, who then has the incentive to demand greater quality control from its distributor[7] If the distributor fails to live up to that demand, then the retailer can simply change distributors (unless as under exclusive territorial systems, there is no other distributor of the brand in question).

In other words, normal market forces would appear to be a sufficient safeguard against stale beer. Moreover, competitive distribution seems to have an advantage over monopoly territories in giving sellers the power to demand fresh beer from distributors. In addition, open dating of beer is a more direct response to the stale beer problem if it exists. Finally, the makers of other foodstuffs for which freshness is a high priority appear to be able to handle the issue without resort to federal antitrust immunity. Like the litigation cost problem, the fresh beer problem hardly needs the attention of the Congress and this Committee.

3, Preventing the Harmful Consequences of Transshipping

The beer industry has chosen the transhipping issue as the linchpin of its arguments for this legislation. When a distributor transships, it simply sells beer outside its normal geographic market. Yet the National Beer Wholesalers Association accuses transshippers of "encroaching" on the business of legitimate distributors, driving many wholesalers to bankruptcy, and generally causing "disastrous consequences for the brewer, the wholesaler and the consumer."

Despite these accusations, transshipping appears to be a form of healthy competition. The threat of lower-priced beer from another region will serve to keep distributors from pricing their beer above market clearing prices. And for areas with little or no competitive distribution, transshipping is crucial to cushion the harmful consequences of industry concentration.

Moreover, nothing prevents the "victim" of transshipping in one area from becoming its protagonist in another area. Barriers to entry are relatively low in the beer distribution market, at least compared to barriers to entry in manufacturing. Thus, a distributor can respond to transshipping by becoming a transshipper himself.

Of course, distributors are frustrated about transshipping. No one likes to have customers lured away. And no one enjoys having investment decisions complicated by factors like transshipping that are difficult to assess. But Richard Quinn, Sales Manager of the Beer Company in Indianapolis, said it best:

> "As one who has spent twelve years as a beer wholesaler in Indiana, both as a traditional protected wholesaler and more recently as an aggressive, competitive transshipper, I can state with complete confidence that in my experience A) it is a lot easier to operate in a protected market , and B) in order to survive in the free enterprise system, competition forces one to reduce prices, effect economies in your operation, increase volume, and target specific geographical markets as well as retail account profiles....In my opinion transshipper is just a negative way of saying competitor."

IV. Conclusion

The transshipping argument, like the fresh beer argument, is unpersuasive. In the end, that is beside the point; these issues are for the courts to evaluate. Exclusive territories are perfectly legal as long as they are not anticompetitive. Thus, if the beer wholesalers are correct that exclusive territories will enhance competition, they have little to fear. One or two test cases will be litigated under Sylvania, the courts will set criteria specific to the beer industry and the matter will be closed. That is a far cry from enacting legislation that potentially immunizes territorial monopolies in an already concentrated market, and would inevitably serve to lengthen the queue of industries seeking their own special antitrust deal.

Consumer Federation of America thanks the Committee for the opportunity to appear today. We urge you not to send S. 412 to the full Senate.

STATEMENT OF STEPHEN BROBECK, EXECUTIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. BROBECK. Thank you very much, Senator. I know the hour is late and you have probably had your fill of beer testimony this morning, so I will try to practice Leo Durocher's other principle that nice guys finish fast.

In our view, S. 412 offers absolutely no benefits at all to consumers or to the public at large, only costs. If enacted, prices would clearly rise. This has been the experience in States like Indiana, New York, New Jersey, when either exclusive territories were established or they were prohibited.

The only question really is by how much. Different evidence suggests that they would rise between 10 percent and 30 percent. Moreover, very clearly there is no increase in quality when exclusive territories are established. The bill's supporters have not been able to document that transshipped beer is lower in quality, and with good reason, because most evidence suggests that the quality is lower in exclusive territories.

So, on the one hand, prices will rise; on the other hand, there is no increase in quality, and there is a very simple reason for this. That is because enactment would reduce competition. This is, after all, the main purpose of the legislation—the elimination of competition by transshippers.

The bill does include a test of substantial and effective competition with other malt beverage products. Without this, of course, it would have no political future. But this does not include competition with the same brand, so the legislation fails, then, to appreciate the fact of consumer brand loyalty.

All of these reasons, Senator, compel CFA's opposition to the legislation, but they are not the principal reason that we are opposed. It is because if this bill is passed and enacted, this would encourage other sellers to seek similar antitrust immunity.

We saw after 1980, when the soft drink bottlers received an exemption, that doctors, lawyers, shipping companies, and office equipment dealers came to Congress to seek their own special relief. And it appears quite clear to us that if Congress limits immunity of distributors, these industries will be joined by dozens of others.

I suspect that Congress would not welcome additional special-interest campaigns of this sort, and certainly consumers would not be the beneficiaries.

So for all these reasons, we would urge you and the members of the committee to vote against sending S. 412 to the floor of the Senate. Thank you.

Senator DECONCINI. Thank you very much, Mr. Brobeck. I have some questions I will submit to you.

Let me ask you this: Did the Federation oppose the soft drink bill in 1980? I believe they did.

Mr. BROBECK. I believe we did, yes.

Senator DECONCINI. In your judgment has it been detrimental to consumers? Have you done any studies?

Mr. BROBECK. We have not carefully studied that situation. However, I would suggest that perhaps the main reason that soft drink prices have not escalated enormously is because world sugar prices came down substantially around that time and have remained at fairly depressed levels.

Senator DECONCINI. But you have no evidence to indicate that consumer prices have risen dramatically as a result of that legislation?

Mr. BROBECK. We have not studied it. The evidence that we do have suggests, however, in the case of beer that prices go up. That is why we are concerned about this legislation.

Senator DECONCINI. Would you conclude that the legislation in form is very similar?

Mr. BROBECK. It is similar, but there are differences between the industries.

Senator DECONCINI. Thank you.

I have no further questions. The hearing record will remain open for 2 weeks for additional comments. The committee thanks you for being here today, and the committee will stand in recess subject to the call of the chairman.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

APPENDIX

NATIONAL
GROCERS
ASSOCIATION

Headquarters Office
1825 Samuel Morse Drive
Reston, Virginia 22090
(703) 437-5300

Public Affairs Office
1910 K Street, N.W., Suite 700
Washington, D.C. 20006
(202) 955-8400

May 21, 1985

The Honorable Strom Thurmond
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

On behalf of the National Grocers Association, I am writing to express our opposition to S.412, the Malt Beverage Interbrand Competition Act of 1985. This legislation, which is being considered by your Committee for the second time is unnecessary.

The N.G.A. has been recognized by the Bureau of National Affairs as "the small business spokesman" for the food distribution inudstry. Our membership includes over 2,000 independent retail grocers, 62 wholesale distributors serving over 28,000 retail food stores and 60 state and local associations. Members of the N.G.A. serves consumers in all fifty states.

N.G.A. believes that there is absolutely no need for special legislation that would specifically exempt from the anti-trust laws the vertical territorial restrictions maintained in the malt beverage distribution industry. Territorial restriction clauses under the antitrust laws have been held valid by the courts where interbrand competition is promoted. Should there be deficiences in the antitrust laws, they should not be corrected on an industry by industry basis.

I would call your attention to the conclusion of the Department of Justice's Antitrust Division on this legislation when they noted, "While we recognize that the language is intended to 'clarify' the applicability of the antitrust laws to exclusive dealing arrangements in this industry, no such clarification is needed. The Supreme Court adopted an entirely sensible rule of reason approach to exclusive vertical territorial agreements in Continental T.V. Inc. v. G.T.E. Sylvania, Inc." We share the Justice Department's concern over this duplicative and burdensome legislation, which would serve to undermine the very important aspects of our free enterprise system in this particular industry.

On behalf of the N.G.A. I respectively request the inclusion of our views in the hearing record on S.412.

Sincerely,

Thomas F. Wenning
Executive Vice President

TFW/lg

STATEMENT OF
THE NATIONAL LICENSED BEVERAGE ASSOCIATION
ON S. 412, THE MALT BEVERAGE INTERBRAND COMPETITION ACT
FOR THE SENATE COMMITTEE ON THE JUDICIARY, MAY 14, 1985

The National Licensed Beverage Association is a non-profit trade association with headquarters in Alexandria, Virginia. We offer services in public affairs, education and research to our approximately 30,000 members, who operate license beverage retail establishments across the country--such as cocktail lounges, restaurants and taverns.

The majority of these small businesspeople have a deep concern about the consequences of S. 412 if it should become law. They are very worried about the detrimental effect it will have on their businesses, their livelihood, and their families.

Their major concern is that neither the small businessman nor the American consuming public would be served best by granting special exemption of the antitrust laws of our nation to a self-interest group. This action would create "beer barons" throughout the marketplace. In fact, we view this type of legislation as harmful to the consumer and to the retailer, because it would put _your_ stamp of approval on a monopolistic situation.

We are afraid that a favorable recommendation by this committee and the ultimate passage of this proposed legislation would create many negative situations for which the American consuming public will pay the price.

First, granting a self-interest group special exemption to the antitrust laws will surely open pandora's box and encourage every other self-interest group to seek similar treatment. After all, a legal monopoly could be very lucrative. Already, other organizations are waiting in the wings to see what action is taken on S. 412. There is no doubt in our minds that if the beer wholesalers receive favorable action on this legislation, the wholesalers of distilled spirits and wines will attempt to amend the bill or will submit legislation of their own granting them this same privilege.

It is our understanding that the Sherman Act was written to prevent large monopolies from forming and to foster free competition in the marketplace--the cornerstone of our very successful free enterprise system. NLBA fails to see why one industry should be exempt from laws by which all other American industries must abide.

Let's not forget that antitrust laws were enacted for the protection of the small businessman and the consuming public. In this case, special exemptions to these laws can only take away that protection and lay open the small businessman and consuming public to the whims of beer wholesalers who would have exclusive rights to sell their brand of beer to retailers within the boundaries of their kingdoms. As in any feudal economy, this one too would be supported on the backs of the "peasants"--in this case, the consumers.

In reality, this has already happened. In 1980, Congress set a precedent by allowing the soft drink industry exemptions to antitrust. Today, we have proof that others will seek this exemption.

Granting wholesalers an exemption to the antitrust laws of this country will lead to the elimination of wholesale competition and would place the retailer at the mercy of, in this case, the beer wholesaler. When you eliminate competition, you upset the marketplace. Eliminating competitive pricing will allow a sole wholesaler to dictate his price within his kingdom.

NLBA is not alone in its opposition to this proposed legislation. At hearings before the 97th and 98th Congress, numerous associations as well as the Department of Justice have spoken out in opposition to this self-interest legislation which not only affects the consumer but free enterprise as well. Since the first bill was introduced in the 97th Congress, fewer and fewer cosponsors have signed on to subsequent proposed legislation as they become more familiar with the facts and detrimental effect this legislation would have on retail segments of our industry.

When legislation dictates purchasing restrictions on any retailers, it limits their ability to function under normal business conditions to purchase at the most favorable prices. That lack of ability to follow traditional purchasing guidelines results in higher prices and higher operational costs for the retailer--and ultimately higher prices for the consuming public.

The passage of this legislation would be another indication of the federal government getting involved in an area that has traditionally been a states right. For example, the last Congress forced states to raise their minimum drinking age to 21 by withholding federal highway funds. The negative reaction to this legislation from Governors, state legislators and public citizens, as well as legal action initiated by the Attorney General of South Dakota, has caused many federal legislators to have second thoughts about the legislative action.

This year, in Indiana, attempts were unsuccessful as in the past to abolish rule 28 which prevents beer wholesalers from establishing exclusive territories. With S. 412, we once again see the federal government preempting state's rights which, evidentally, the citizens of Indiana do not wish to have forced on them on a state level--and certainly not by the federal government.

While the beer industry appears to be stumbling around trying to figure out if they want the legislation, need it and how they are going to get it, the end result of the passage of this proposed legislation remains concrete. It will cause a disruption in the marketplace placing licensed beverage retailers in an uncompetitive purchasing position and ultimately result in higher prices for the consuming public.

The limits placed on the beverage alcohol industry are many and well-documented. This industry is well regulated at both the federal and state levels. The three-tier system of distribution regulates competition among distributors. The National Licensed Beverage Association believes that these proposed additional limits on competition in S. 412 would help the first two levels of distribution to the detriment of the third level--the retail level--the level of our members. In addition, this bill would limit competition to the detriment of the consumer who, in the final analysis, will pick up the extra tab.

The proponents of this legislation would lead us to believe that their industry is threatened by transshipping and that this special waiver of the antitrust laws is needed to save the industry. Let me state that transshipping is nothing new to the beer business. It has gone on for years, often by one wholesaler within his own area. This is especially true in summer resort areas where large inventories of beer are picked up at the end of the season and dumped on other accounts which remain open throughout the year. There are laws to regulate the sale of alcohol beverages across lines of particular government jurisdictions and the disadvantages of transshipping within a designated area can best be controlled by self-regulation and self-policing within the industry.

Proponents of this legislation further state that transshipping affects the consumer because transshipped beer has often exceeded its self life and the consumer is sold old beer. Yet to our knowledge only one major brewery clearly indicates the brewing date of its product on the containers. Other breweries use a label code which is indistinguishable to the consuming public--and to the retailer. If stale beer is the issue here, why isn't the brewing date made available and clearly market on the container as is done with so many other products we purchase today? The truth of the matter is that the passage of S. 412 will provide the wholesalers with "beer baron" kingdoms at the expense of both the small licensed beverage retailer and the American consuming public. The possibility of stale beer is no excuse to undermine sound law.

Fifty-two years ago, our country repealed the disastrous experiment of Prohibition and, in doing so, enacted strong federal and state regulations to protect the American public as the sale of alcohol beverages once again became legal. Today, we sit here contemplating legislation that could exempt a special group from laws that were designed to protect that same public. We do not need the rebirth of "beer barons" in our industry or in the American marketplace. The public interest would well be served by a resounding defeat for this ill-conceived and badly motivated legislation.

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